

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

C.P.No.2/BB/2018

Under Section 252(3) of the Companies Act, 2013

Order delivered on: **12th March 2018**

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

**IN THE MATTER OF
ACERHEALTH ONESOURCE PRIVATE LIMITED**

Acerhealth Onesource Private Limited
107/1, Wheeler Road, Cox Town
Bangalore 560005. -

PETITIONER

Versus

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

RESPONDENT

For the Petitioner (s) : Mr. H.N Krishnamurthy, #53/1, West Anjaneya
Temple Street Basavangudi, Bengaluru-560004
Practicing Company Secretary and Authorised
Representative for the Petitioner

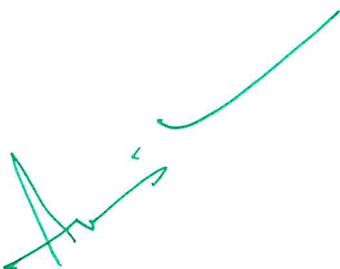
Per: Hon'ble Shri Ashok Kumar Mishra, Member (Technical) – Author

Heard on: 04.01.2018, 30.01.2018,12.02.2018 & 05.03.2018

O R D E R

The Petitioner Company **M/s. Acerhealth Onesource 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 made in the Company Petition are briefly described hereunder:-

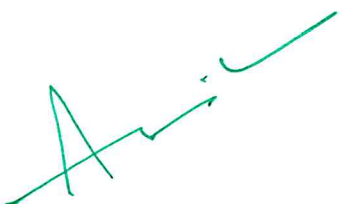


The Petitioner Company was incorporated on 15th March, 2012 under the name and style of “**M/s. Acerhealth Onesource Private Limited**” with the Registrar of the Companies, Karnataka at Bangalore and obtained Certificate of Incorporation vide bearing CIN No. **U93000KA2012PTC063081**. The Registered Office of the Petitioner Company is situated at 107/1, Wheeler Road, Cox Town, Bangalore 560005.

The main objects of the Petitioner Company are to provide third party administrations services to Insurance companies, back office support like claim processing & settlement of claims to insurance companies both in private and public sector and handling insurance accounts of corporate clients in consonance with government or IRDA regulations; to carry on in India elsewhere the business of providing preventive healthcare and health information to consumers, patients, tourists, health care professionals and organisations regarding the scope and type of health care facilities available in India and abroad, to help patients to access top quality specialised and appropriate health care and to act as liasioning agents between the non-resident Indians, foreign nationals, and people abroad with their relatives, friends and near ones regarding their health care, to act as consultants to corporate including multinationals companies for providing health service to their staff or relatives of staff by providing, and or otherwise arranging for the periodical checkups, surgeries and other types of medical care and to do all incidental acts and things necessary for the attainment of foreign objects etc., Details of the objects of the Company are mentioned in the Memorandum and Articles of Association of the Petitioner Company.

The Authorised Share Capital of the Petitioner Company is Rs. 1,00,000/- divided into 10,000 equity shares of Rs 10/- each. The current Issued, Subscribed and Paid-up capital of the Company is Rs. 1,00,000/- divided into 10,000 equity shares of Rs. 10/- each.

It is averred in the Company petition that, the Petitioner Company has been managed by only two Directors Mr. Jaikumar Harikrishnan Cullath, Mrs. Eswaran Devi Sumitra and having two Shareholders.

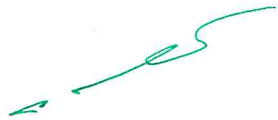
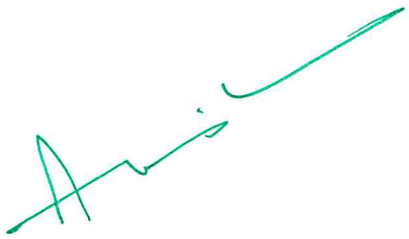


It is averred in the Company Petitioner that, while filing certain returns to the Registrar of Companies through MCA portal on 3rd July 2017, the Petitioner Company got the error message as **'The Status of entered CIN is strike off and this form cannot be filed for this status'** and due to this the Petitioner Company could not upload the e-forms and subsequently an enquiry was made with the Registrar of Companies, the Petitioner came to know that the filing of statutory annual returns and financial statements has not been done in terms of the provisions of Section 92/137 of the Companies Act, 2013 since 2012-13 and hence the name of the Petitioner has been struck off from the Register of the companies maintained by the Registrar of Companies and vide Public Notice.

It is further averred that, the Petitioner Company has been active since its incorporation and has also been maintaining all the requisite documentation, as per the provisions of the Companies Act, 1956 / the Companies Act, 2013. It is further averred that, the Petitioner Company has not received any show cause notice, nor was it afforded any opportunity of being heard before the aforesaid action was taken by the Respondents.

It is further averred that, both the Directors of the Petitioner Company are frequently travelling abroad for business purpose and they are dependent on the employees for all secretarial work and due to lack of knowledge of these employees and frequent leaving of employment, the Company has not filed the financial and annual returns from its inception and also the Company is having assets and liabilities and the same is visible in the financials statement enclosed to this Petition.

It is further averred that, the Petitioner Company had audited financial statements and annual return and conducted Annual General Meetings in time and complied the provisions of law and due to oversight the Petitioner Company has not filed the financial statements and annual return for the Financial Years 2012-13, 2013-14, 2014-15 and 2015-16 and the said default is occurred without any malafide or fraudulent intention on the part of Petitioner Company or its Directors for non-filing of statutory returns in the stipulated period. Copy of Financial Statements for the Financial Years 2012-13, 2013-14, 2014-15 and 2015-16 are enclosed and shown as **Annexure A7**.



It is further averred that, the Petitioner Company is an ongoing concern and has considerable assets and liabilities and having continued business. In case the name of the Company struck off, the Petitioner Company and Shareholders may cause irreparable damage and creditors will be put to great hardship.

The Registrar of Companies, Karnataka, Bengaluru has filed Counter Affidavit dated 29th 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 subject Company is registered with the Registrar of Companies on 15th March, 2012 with **CIN U93000KA2012PTCO63081** and as per the records of the Company in MCA 21 portal the Registered Office address is No.107/1, Wheeler Road, Cox Town, Bangalore 560 005. Copy of the Company Master Data is produced and marked as **Annexure-I**.
- 2) 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 date of incorporation 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 16.03.2017 was sent to the Company. Copy of the said notice is produced and marked as **Annexure-II**. Further, STK-1 notice dated 31.03.2017 was sent to Mr. Jaikumar Cullath and Mrs. Eswaran Sumitra, Directors of the Company to the address available in the MCA 21 Portal. 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 to the Directors of the Company, it was interalia mentioned that the Company was not carrying on business or operation for a period of two immediately preceding financial years and that the Company has not applied u/s 455 of the Act and that the Respondent proposed to strike off the name of the Company from the Register of Company as per Sec 248 of the Act unless a cause is shown to the contrary within 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 & VIII** respectively.

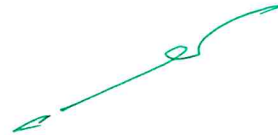
- 5) It is submitted that since neither cause was shown to either the physical notices or to the website, Gazette and newspaper notices either by the Company or its Directors, and also since no Balance Sheet or Annual Return was filed by the Petitioner company till 21.06.2017 the day on which the list 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) The Company states that, it was an active company since incorporation and also been maintaining all the requisite documentation as per the Companies Act, 1956/2013 and had Audited financial statements and conducted Annual General Meetings. 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.
- 8) The Petitioner has prayed that the name of the Company be restored to the Register of Companies under section 252 of the Act. Subject to the satisfaction of this Hon'ble Tribunal may kindly and in the event of this Hon'ble Tribunal willing to revive the Company, then the Respondent humbly prays that this Hon'ble Tribunal may kindly,
 - a) Direct the Petitioner to undertake to file the overdue returns up to date within 30 days in the MCA 21 Portal from the date of the order of NCLT reviving the Company and comply with the provisions of Companies Act, 2013.
 - b) 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.
 - c) 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 of the Petitioner.

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)/2017/1 dated 17th 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 since its incorporation i.e. 2012 till 2016-17 before the Respondent i.e. Registrar of Companies. The Directors are willing to continue the Company since the Company is involved in the business of providing preventive healthcare and health information to customers, patients, tourists, health care professionals and organisations. 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 Practicing Company Secretary has filed an Affidavit dated 7th November 2017 of the Directors/Members of the Petitioner Company confirming 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 07.11.2017.

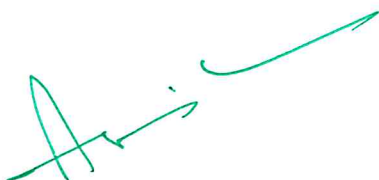
The Directors/Members of the Petitioner Company has also filed an undertaking to file all the overdue returns such as Financial Statements, Annual Returns and other documents, if any with Ministry of Corporate Affairs immediately within 30 days upon restoration of the name of the Company by the Hon'ble National Company Law Tribunal, Bengaluru Bench.

The Petitioner Company has filed copies of statement of account of State Bank of India for the period from 01.04.2017 to 27.10.2017. Copies of the Bank Statement is enclosed and marked from Page Nos. 125 to 146.

The Petitioner Company has also filed copies of Financial Statements along with Auditor's Report for the years 2012-13, 2013-14, 2014-15, 2015-16 and 2016-17. Copies of the Financial Statements are enclosed and marked from Page Nos. 39 to 115.

The Petitioner Company has filed the IT Returns for the years 2014-15, 2015-16 and 2016-17. Copies of the IT Returns are enclosed and marked from Page Nos. 116 to 118.

We have heard the Practicing Company Secretary, who contended that, non-filing of Annual Returns and Balance Sheets within the time as per the provisions of Section 92/137 of the Companies Act, 2013, was occurred inadvertently and without any malafide or fraudulent intention on the part of Petitioner Company or its Directors and further contended that, the Petitioner Company has properly held Annual General Meetings for the above said years and laid before the Annual General Meetings the audited Balance Sheet and Profit & Loss Account, together with the Director's and Auditors Report thereon, which was also adopted by the Members, the Company has not committed any default under Sections 92/137 of the Companies Act, 2013. He further contended that, the Applicant Company will



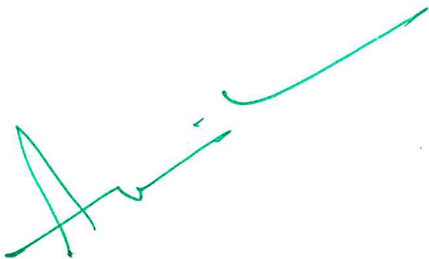
submit necessary filing of Financial Statements and Annual Returns soon after restoration of the name of the company with the Registrar of Companies, Karnataka at Bengaluru and prayed the Tribunal to revive this Company.

It is observed from the Bank Statement provided by State Bank of India, Richards Town, Bengaluru that the Petitioner Company has deposited US \$ 199950 on 28th June 2017. The Registrar of Companies, Karnataka, Bangalore/Petitioner Company Statutory Auditor is to look into it.

We have seen the Income Tax Return file with the Income Tax Department for the Assessment Year 2014-15, 2015-16 and 2016-17. We have also seen the latest Balance Sheet as on 31st March 2017 of the Petitioner Company. The Petitioner Company is having Fixed Assets worth of **Rs 40,55,730/-** and Current Assets of **Rs 42,02,985/-** and the turnover of the Petitioner Company is **Rs 1,46,45,952/-**. Further the turnover of the Company was **Rs. 1,36,81,729/-** for the financial year ending 31/03/2016 as per Balance Sheet. After hearing the Practicing Company Secretary for the Petitioner Company and after 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, 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. 1,00,000/-** 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. **Acerhealth Onesource 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