

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

C.P.NO.54/BB/18

Under Section 252(3) of Companies Act, 2013

IN THE MATTER OF

ADVANCED SIERRA ELECTROTECHPRIVATE LIMITED

Vs

REGISTRAR OF COMPANIES, KARNATAKA

Coram: 1. Hon'ble Shri.RatakondaMurali, Member Judicial

2. Hon'ble Shri.Ashok Kumar Mishra, Member Technical

Order delivered on: 12TH MARCH, 2018

For the Petitioner (s): K. Dushyanth Kumar,
Practicing Company Secretary,
Representative for the Petitioner Company.

Per: **Hon'ble Shri.Ashok Kumar Mishra, Member Technical – Author**

Heard on.12.2.2018, 27.2.2018

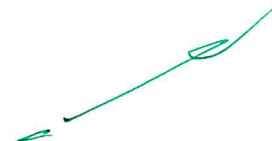
ADVANCED SIERRA ELECTROTECH PRIVATE LIMITED

No. 563/1, Prerana Towers,
Ranka Colony Road off.
Bannerghatta Road,
Bangalore-560076.

Vs

REGISTRAR OF COMPANIES, KARNATAKA

'E' Wing, 2nd Floor, KendriyaSadana,
Kormangala, Bangalore-560034.



ORDER

The Petitioner Company **ADVANCED SIERRA ELECTROTECH PRIVATE LIMITED** has filed the present petition under Section 252(3) of the Companies Act, 2013 with a prayer for restoration of the name of the company.

The averments made in the petition are as follows:

The Petitioner Company was originally incorporated on 02nd June, 2004 under the name and style of “**ADVANCED SIERRA ELECTROTECH PRIVATE LIMITED**” in the State of Karnataka vide **CIN No.U72900KA2004PTC034069**. The Registered Office of the Petitioner Company is situated at No. 563/1, Prerana Towers, Ranka Colony Road Off, Bannerghatta Road Bangalore-560076, Karnataka, India.

The Authorised Capital of the Petitioner Company is Rs.10,00,000/- Rupees Ten Lakhs only) divided into 1,00,000(One Lakh) equity shares of Rs.10/- each. The paid-up capital is Rs.5,00,000/- divided into 50,000 equity shares of Rs. 10/-each as stated in the Petition.

The main objects of the Petitioner Company as stated in Memorandum of Association, inter alia, the Company is engaged in the business of manufacturing of printed circuit boards and designing electronics systems for industrial and commercial applications, specialise in providing electronic product designs, PCB layout, prototyping, programming and specialty products.

The Petitioner Company has stated in the petition that the Company is a Private Limited Company, with two Directors. Petitioner Company further states that the name of the company has been struck off by the Register of Companies, Karnataka on 17th July, 2017 vide Notice No. STK.7/ROC(B) /2017/1 dated 17.07.2017. Further, the directors are willing to continue the company. The Company had carried out regular business activities and had generated operating income.

It is also stated in the petition that, the Petitioner Company has filed its annual accounts and annual return for the year 2013-14. However, the Company had inadvertently not filed annual accounts and annual returns for the years 2014-15, 2015-16 & 2016-17. It is also stated in the petition that the financial statements have also been audited by statutory auditors of the company but had inadvertently failed to file the



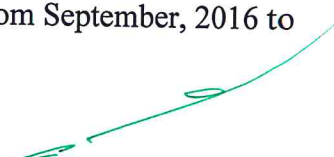
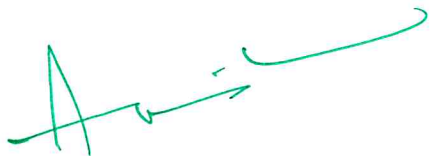
same with Registrar of Companies. Further, the petitioner company stated that the Company has good amount of revenue generated out of the business activities carried on by the company. The company had carried on the activities that are mentioned in its Memorandum of Association to create operating income. The Company's annual financial statements also depict significant accounting transactions such as long term borrowings, short term loans and advances given by the Company, the Company had also made some non-current investments. The company also had carried on transactions with the entities in foreign nations which helped the company to generate revenue in foreign currency. The Company had also spent some monies in foreign currency. The Company had carried on commendable business activity since its incorporation.

It is further stated in the petition that the object of Section 252(3) of the Companies Act is to give a chance to the Company, its members and creditors to revive the company which has been struck off by the Registrar of Companies, within a period of 3 years, and to give them opportunity of carrying on the business only after the Hon'ble Tribunal is satisfied that such restoration is necessary in the interest of justice and if the present application is not allowed and the name of the Company is not restored on the Registrar of Companies, the Petitioner as well as its shareholders shall suffer irreparable loss and hardship and will be highly prejudiced.

The Petitioner Company has stated that the turnover as per the balance sheet available as at the end of the financial year 2017 is Rs. 1,524,019/-.

The Petitioner Company has filed the Balance Sheet for the financial year 2016-17 to establish that the company is ongoing concern. The Revenue from operations of the Petitioner Company is Rs. 1,524,019/- , Long-term borrowings of the Petitioner Company is Rs.5,11,27,508/-, Trade Payables of the Petitioner Company is Rs.89,81,825 for the financial year 2016-17.

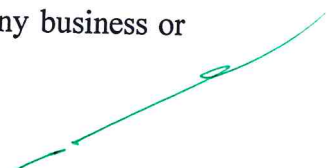
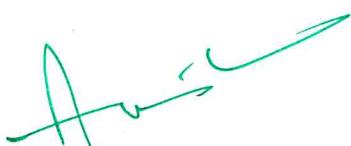
The Tribunal vide order dated 12th February, 2018 directed the Petitioner Company to issue notice to the Registrar of Companies and the matter was listed for hearing on 27th February, 2018. The Directors of the Petitioner Company have filed an affidavit dated 12th January, 2018 stating that no abnormal amount has been deposited in the Company's bank accounts during demonetization period from September, 2016 to



January, 2017 in any of the company bank accounts and further states that the Petitioner Company has not received any notice from Income Tax Authorities with respect to deposit of cash during the demonetization period and further declared to file all overdue returns such as Balance sheets, Annual Return and other documents within 30 days from the date of NCLT order.

The Registrar of Companies, Karnataka has filed counter affidavit dated 22nd February, 2018 along with the Annexures. The Registrar of Companies herein denies all the averments made in the Petition save the averments which are specially admitted herein below and submit his counter to the Petition as under:

- i.) The Petitioner Company is registered with the Registrar of Companies on 02/06/2004 with CIN: U72900KA2004PTC034069 and as per the records of the Company in MCA 21 portal. The Registered Office address is No.563/1, Prerana Towers, Ramka Colony Road Off, Bannerghatta Road, Bangalore-560076. The copy of the Company Master Data is shown as **Annexure I**.
- ii.) 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(hereafter called as the 'Act') 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 17th March, 2017 was sent to the company. The copy of the said notice is produced and marked as **Annexure II**. Further STK-1 notice dated 22.03.2017 was sent to all 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**.
- iii.) In the said notice STK-1 that was sent to the company and the directors of the company, it was inter alia mentioned that the petitioner company has not carrying on any business or



operation for two immediately preceding financial years nor has not filed application U/s 455 of the Act 2013 and that the respondent proposes to strike off the name of the company from Registrar of Company as per Section 248 of the Act unless a cause is shown to the contrary with 30 days from the date of receipt of the STK-1 notices.

- iv.) 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 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 -IV, V & VI** respectively.
- v.) 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 by 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 off 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 -VII**. 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 the publication made in the Official Gazette on 29.07.2017 is shown as **Annexure-VIII**.

- vi.) It is stated in the Petitioner Company has good amount of revenue generated out of the business activities carried on by the Company and that the Company has carried on the activities on by the company and that the activities that are mentioned in its MOA to create operating income and that the Company's annual financial statements also depict significant accounting transactions such as long term borrowings, short term loans and advances given by the Company, the Company had also made Some non-current investment and that the Company is ready to submit all relevant documents from the financial years 2014-15 & 2015-16.
- vii.) There is no inquiry, investigation and complaints against this Company.
- viii.) The Petitioner has prayed that the name of company be restored to the Register of Companies under section 252 of the Act. Subject to the satisfaction of this Hon'ble Tribunal 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 with in 30days in the MCA 21 Portal from the date of the order 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 Demand draft favouring the Pay &Accounts Officer, Ministry of Corporate affairs, southern region, Chennai, towards the expenses incurred by the Respondent in the section

248 action, like postage, stationery, advertisements charges etc.

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

The Registrar of Companies has exercised its power under Section 248 of the Companies Act, 2013 read with (Removal of name 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.

On perusal of the affidavit of the Registrar of Companies, it appears that the name of the company was struck off, for failure on the part of the company to file the statutory documents since 2014-15 till 2015-16, as mandatorily required under the Act.

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 Petitioner has filed before this Tribunal the documents along with copies of balance sheet, Profit and loss account, and auditor reports as per **Page no.34 to 114** along with the petition wherein it is clear that the company was carrying out business on the date of receipt of notice in Form STK-1 as well as on the date of struck off which shows that the Company was carrying on the business.

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.”

After hearing the PCS for the Petitioner Company and perusal of the material on record, the report of the Registrar of Companies, Karnataka and after 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 hence name of the Company to be restored in the Register of Companies as maintained by Registrar of Companies.


THIS TRIBUNAL DO FURTHER ORDER

The Petitioner Company shall within 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 other Statutory filings for the period of default i.e. from 2014-15 to 2015-16 and the subsequent year in prescribed format as required under the Companies Act, 2013 be filed with the Registrar of Companies,

The Petitioner Company is directed to pay Rs.30, 000/- as cost to the account of Central Government in favour of the Pay & Accounts Officer, Ministry of Corporate Affairs, Southern Region, Chennai and D.D. drawn to be handed over to Registrar of Companies, Karnataka Bangalore.

The Registrar of Companies, Karnataka is further directed to restore the name of the Petitioner company i.e. **ADVANCED SIERRA ELECTROTECH PRIVATE LIMITED** in the Registrar of Companies within a period of 30 days from the date of this order, after charging necessary fee as may be applicable and also to accept Balance Sheet and other Statutory Returns after charging additional fee as required under the Companies Act, 2013.


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL


(RATAKONDA MURALI)
MEMBER, JUDICIAL