

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

C.P.NO.33/BB/2018

Under Section 252(3) of Companies Act, 2013

IN THE MATTER OF

M/S. JASKY EXPORTS PRIVATE LIMITED
Vs
REGISTRAR OF COMPANIES, KARNATAKA

Coram: 1. Hon'ble Shri.Ratakonda Murali, Member (Judicial)
2. Hon'ble Shri.Ashok Kumar Mishra, Member (Technical)

Order delivered on 23rd, February, 2018

M/s. JASKY EXPORTS PRIVATE LIMITED
Plot No.3-C, Phase I,
Doddanakkundi Industrial Area,
Mahadevapura P.O., Bangalore-560 048.

Vs

REGISTRAR OF COMPANIES, KARNATAKA
'E' Wing, 2nd Floor, Kendriya Sadana,
Kormangala, Bangalore-560034.

For the Petitioner: Shri S. Raghavan, PCS
248, Indira Towers, 1st Floor,
11th Cross, Wilson Gaeden,
Bengaluru – 560 027.

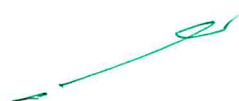
Per: Hon'ble Shri Ratakonda Murali, Member Judicial.

ORDER

Heard on 16.02.2018.

The Petitioner Company M/s jasky exports 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 as originally existed on the Register of Companies maintained by the Registrar of Companies as if its name had not been struck off from the rolls of the Register.

The averments made in the petition are as follows:



The Petitioner Company was originally incorporated on 1st January, 1985 under the name and style of "M/s. JASKY EXPORTS PRIVATE LIMITED" in the State of Karnataka vide CIN U85110KA1985PTC006612. The Registered Office of the Petitioner Company is situated at Plot No.3-C, Phase I, Doddanakkundi Industrial Area, Mahadevapura P.O., Bangalore-560 048. The Authorised Capital of the Petitioner Company is Rs.1,00,00,000/- (Rupees one crore only) divided into 10,00,000 (ten lakhs) equity shares of Rs.10/- each. The paid-up share capital is Rs.84,16,300/- (Rupees eighty four lakhs sixteen thousand and three hundred only) divided into 8,41,630 (eight lakhs forty one thousand six hundred and thirty only) equity shares of Rs.10/- each.

The object of the Petitioner Company is to promote, establish, maintain manage,, run, design, develop, innovate, supervise, finance aid, assist, advise and collaborate with any association, individual, firm, company, enterprise, body, undertaking, institution or scheme, for the business relating to the manufacture, converting, processing, packing, refining, maintaining, exporting, importing, buying, selling, clearing, exchanging improving rendering services of all and every kind, dealing in and acting as agents or converters of all types and forms of food stuffs and eatables including frozen meat and vegetables and herbal products, health and sea foods, vegetable based snack foods, spices, condiments, essential oils, oleoresins, fruits, vegetables, canned concentrates like pulps, concentrates like pulps, concentrates, squashes and juices, chutneys, pickles, jams, jellies, marmalades, ketchups, confectioneries, cakes, pastries, bread, biscuits, chocolates, toffee, sweets fruit bars, bakery products, pulses, cereals, honey, dried fruits and nuts, flavours,, colours, syrups, soft drinks, liquor, wines, vinegar and vegetable based food products.

The Petitioner Company states that its name has been struck off by the Registrar of companies, Karnataka in the month of July, 2017 for failure to file Financial Statements and Annual Returns for the period 2010-11 to 2015-16 by initiating proceedings under Section 248 of the Companies Act, 2013. The petitioner has stated that the Respondent had initiated the proceedings under Section 248 of the Companies Act, 2013 for the purpose of striking of the

name of the Company from the Register maintained by it. The Petitioner Company further states that it was regular and has filed its financials and Annual Returns upto 31.03.2010. The Petitioner Company has submitted that the impact of recession on Indian Textile Export during the year 2009 has affected the Petitioner Company. It has further stated that the Petitioner Company has availed various financial facilities from its Banker, State Bank of Travancore and was servicing the loans and facilities availed. Due to business operational losses, the Petitioner Company was unable to service the loans/facilities availed from the bank and were facing serious problems of working capital and labour issues. The Petitioner Company was unable to pay its employees, workmen, vendors and professionals for various services availed from them.

The Petitioner Company has further stated that it received a notice for land acquisition from the Bangalore Metro Rail Corporation Limited (BMRCL) for the proposed construction of Metro Railway Station. As per the notice issued by the BMRCL, the Petitioner Company had to handover the premises and shift its factory. The Petitioners were thus busy with the formalities and process of obtaining compensation from BMRCL. However, the process of compensation were handled by the acquiring agency, i.e., Karnataka Industrial Area Development Board (KIADB). The process of getting the compensation was so tedious and time consuming, the Petitioner Company could not repay the loans and had to face litigation filed by the State Bank of Travancore in Debts Recovery Tribunal (DRT). Further the Company's assets were taken over by M.s, Maliora Asset Reconstruction Company Limited, an Asset Reconstruction Company (ARC). As the promoters of the Petitioner Company were busy in dealing with all the above work, they were unable to concentrate on the day-to-day operations and statutory compliance under the provisions of the Companies Act, 1956 and 2013.

The Petitioner Company has further stated that with lot of efforts and efflux of time, it has survived and it is now in a position to run the operations as the situation has changed for the better. The Petitioner Company has also shifted its factory to a different location and has

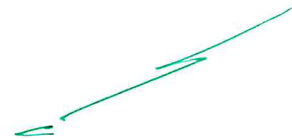
also obtained the compensation granted by BMRCL from KIADB and was in the process of streamlining the statutory compliances. However, the Company has become inactive as it has been struck off under Section 248 of Companies Act, 2013.

The Petitioner Company has further stated that it has received the show cause notice dated 13.02.2017. But, due to its preoccupation for the above work, the Petitioner Company could not respond to the show cause notice.

The Petitioner Company has further submitted that in the event of revival of the Company and restoration of the name of the Company in the Register maintained by the Respondent, it shall file all outstanding statutory documents, i.e., the financial statement and annual returns for the period 2010-11 to 2015-16.

The Registrar of Companies has filed Counter affidavit dated 16th 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 08/01/1985 with CIN:U85110KA1985PTC006612 and as per the records of the Company in MCA 21 portal. The Registered Office address is Plot No.3-C. Phase I, Doddenakkundi Industrial Area, Mahadevapura P.O, Bangalore – 560 048. 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 2015-2016. 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 22nd March, 2017. The copy of the said notice is shown as **Annexure II**.



- iii.) 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 Sec 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 and in all the above said notice 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 – III,IV and V 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 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 12.10.2017. A copy of the said STK-7 Notice is shown as **Annexure –VI.** It was also published in the official Gazette on 29.07.2017 stating that the 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-VII.**
- vi.) It is stated in the petition that the Company is carrying on its business on an going concern basis and that due to pre-occupation it was not able to upload the Balance sheet and Annual returns for preceding two financial years and also stated that the Company is also ready for filing



the annual filings for the year ended on 31.03.211, 31.03.2012, 31.03.2013, 31.03.2014 and 31.03.2015 with Registrar of Companies.

- vii.) It has stated that there is no inquiry, investigation and complaints against this Company.
- viii.) The Petitioner has prayed that the name company be restored to the Register of Companies under section 252 of the Act. Subject to the satisfaction of this Tribunal and in the event of this Tribunal willing to revive the company, then the Respondent humbly prays that this Tribunal may kindly,
- a) 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 of NCLT reviving the company and comply with the provisions of Companies Act, 2013;
 - b) Direct the Petitioner to pay costs as decided by this Hon'ble Tribunal to be paid to the account of Central Government 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 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, as mandatorily required under the Act.

The Petitioner Company has committed a default in not filing the Statutory Returns for the Financial Years 2014-15 to till 2015-2016 before the Respondent i.e. Registrar of Companies. The Petitioner in order to show 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 provided Audited Balance Sheet for the Period between 2010 -11 to 2016-2017.

The Petitioner Company has filed the Balance Sheet for the financial year 2016-17 to establish that the company is ongoing concern. The Long-term borrowings of the Petitioner Company is Rs.6,39,936/-, Trade Payables of the Petitioner Company is Rs.3,81,51,063/- for the financial year 2016-17.

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 Counsel 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.

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 2014-2015 to till 2015-2016 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.50,000/- 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. M/s. JASKY EXPORTS 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

psp.