

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

C.P.No.193/BB/2020
U/s 252 of the Companies Act, 2013
R/w Rule 87A of NCLT Rules, 2016

BETWEEN:

Mr. Basani Premnath Reddy

*Director-cum-Shareholder of
M/s. Chiteta Mining Company Pvt. Ltd.
#226 5th Cross, 80 Feet Road,
Near Ramaiah Hospital,
RMV 2nd Stage, 2nd Block,
RMV Extension II Stage,
Bangalore – 560 094.*

- Applicant/Petitioner

And

The Registrar of Companies, Karnataka

*'E' Wing, 2nd Floor,
Kendriya Sadan, 17th Cross,
Koramangala,
Bangalore - 560 034.*

- Respondent

Date of Order: 30th December, 2020

Coram:

1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present (Through Video Conference):

For the Petitioner : Mr. Jose Thomas (PCS)

For the Respondent : ----

ORDER

Per: Ashutosh Chandra, Member (Technical)

1. C.P.No.193/BB/2020 is filed by Mr. Basani Premnath Reddy Director-cum-Shareholder of M/s. Chiteta Mining Company Pvt. Ltd. ('Applicant/Petitioner') U/s 252 of the Companies Act, 2013, R/w Rule 87A of NCLT Rules, 2016, by inter alia seeking to restore the name of the Petitioner Company namely M/s.



Chiteta Mining Company Pvt. Ltd., on the Register maintained by the Registrar of Companies, Karnataka etc.

2. Brief facts of the case, as mentioned in the Company Petition, which are relevant to the issue in question, are as follows:

(1) M/s. Chiteta Mining Company Pvt. Ltd. (referred to as the 'Company') is a Private Company limited by shares incorporated under the Companies Act, 1956, on 30.07.2012, vide CIN:U13201KA2012PTC065078 with the ROC, Karnataka. Its Authorized share capital is Rs.15,00,00,000/-(Rupees Fifteen Crore Only) and the Paid up Capital is Rs.4,60,45,000/-(Rupees Four Crore Sixty Lakh Five Thousand Only) divided into 46,04,500 equity shares of Rs.10/- (Rupees Ten Only) each.

(2) It is stated that the Company has been non-compliant in filing Form AOC-4 (Annual Financial Statement) and MGT-7 (Annual Return) for the FYs 2014-15 to 2018-19. The name of the Company has been struck off by the ROC. The Company is the holding Company of Chiteta Mining Company Limited, Zambia and has the potential to receive dividend income from the subsidiary and also there is the possibility of repatriation of the investment after exit of the Company from the overseas joint venture. In view of the above potential foreign exchange inflow and also to comply with RBI guidelines on ODI, it is imperative that the Company must be revived.

3. The Registrar of Companies, Karnataka, has filed a Counter by way of Affidavit dated 23.12.2020, wherein he has not opposed the Company Petition. Apart from stating the facts of the case, as mentioned in the Petition, he has inter alia further stated as follows:

(1) Due to non-filing of the Balance Sheets and the Annual Returns from the year 2014-2015 onwards, the ROC issued a notice in Form STK-1 was sent to the Company and its Directors on 10.03.2017 to 25.04.2017.

- (2) Since no cause was shown either to the physical notices or to the website, Gazette and newspaper notices either by the Company or its Directors, the Respondent proceeded to strike off the name of the Company from the Register of Companies and published a Notice in STK-7 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 Section 248(5) of the Companies Act, 2013.
- (3) It is stated by the ROC that there is no inquiry, investigation and Complaints against this Company and the restoration, if considered, may be done subject to payment of reasonable cost since huge expenditure is incurred in restoring the name of the Company, and complying with overdue statutory returns up to date within 30 days in the MCA Portal from the date of the order for restoration. It is also prayed that the DIN of the disqualified Directors may not be restored as the deactivation of the same by the Ministry u/s 164(2)9a) r/w 167 of the Companies Act 2013 is before various High Courts, including the division Bench of the Hon'ble High Court of Karnataka, and the same is pending.
4. Heard Mr. Jose Thomas, learned PCS for the Applicant/Petitioner through **Video Conference**. We have carefully perused the pleadings of the Parties and extant provisions of the Companies Act, 2013, and the Rules made thereunder.
5. Reiterating the facts as submitted with the Petition, Mr. Jose Thomas, learned Counsel for the Applicant/Petitioner submitted that the Company is active and non-filing of Annual Returns/Financial Statements in question was neither intentional nor deliberate as it happened inadvertently. Therefore, the Tribunal may consider the matter sympathetically to restore the name of the Company as prayed for, in the interest of justice.
6. It is not in dispute that the Registrar of Companies is conferred with power U/s 248(1) to strike off the Company, if the Company has failed to commence its business within one year of its incorporation or a Company is not carrying



on any business or operation for a period of two immediately preceding financial years and has not made any Application within such period for obtaining the status of a dormant Company U/s.455. However, Section 248(6) states that the Registrar of Companies, before finally striking off Company, has to satisfy himself that sufficient provision has been made for the realization of all amounts due to the Company and for the payment or discharge of its liabilities and obligations by the Company within a reasonable time, and, if necessary, obtain necessary undertakings from the Managing Director, Director or other persons in charge of the management of the Company.

7. Though, the impugned order striking off the Company was in accordance with law, the Tribunal has to take into consideration the bona fide contentions of Petitioner seeking to restore the name of Company, by taking a lenient view of the issue in the interest of justice and ease of doing business, instead of rigidly interpreting the law on the issue. It is also not in dispute that the instant Company Petition is filed in accordance with law; there are no investigations pending against the Company; the Respondent has not opposed the Petition and left the issue to the Tribunal to consider the case subject to terms and conditions. The Petitioner submits that the statutory compliances could not be made for some years as there were some legal problems with the Zambian company. However, the Company is a going concern and has total Revenue of Rs.2,91,500/- (Rupees Two Lakh Ninety One Thousand and Five Hundred Only) and Rs.3,97,500/- (Rupees Three Lakh Ninety Seven Thousand and Five Hundred Only) for the year ended 31st March 2016 & 31st March, 2017, respectively. In such circumstances striking of its name would adversely affect the business as well as various stakeholders and employees. No prejudice would be caused to any party if the Company's name is restored, as prayed. The Directors/Shareholders of the Company have undertaken to file all the returns, statements and documents that are required under the Companies Act, 2013 within the prescribed time. Therefore, we are of the considered view that the interest of justice would be met if the name of Company is restored as prayed for, however, subject to conditions mentioned below.



8. Hence, by exercising the powers conferred upon this Tribunal U/s 252 (3) of the Companies Act, 2013, and following the principle of ease of doing business, **C.P.No.193/BB/2020** is hereby disposed of with the following directions:

- (a) *The Registrar of Companies, Karnataka, the Respondent herein, is directed to restore the name of the Company in the Register maintained by the Registrar of Companies, Karnataka as if its name had not been struck off from the rolls of the Register, with restoration of other consequential actions taken by Registrar of Companies;*
- (b) *The issue of DIN in respect of the Directors of the Company shall be separately dealt with by the Registrar of Companies on the outcome of the decision of the matter pending before the Hon'ble High Court of Karnataka;*
- (c) The Company is directed to file all the statutory document(s) along with prescribed fees/additional fee/fine as decided by Registrar of Companies **within 30 days from** the date on which its name is restored on the Register of Companies by the Registrar of Companies;
- (d) The Company's representative, who has filed the Company Petition, is directed to personally ensure compliance of this Order;
- (e) The restoration of the Company's name is also subject to the payment of cost of **Rs.20,000/- (Rupees Twenty Thousand only)** to be paid online to the account of Central Government in favour of the Pay & Accounts Officer, Ministry of Corporate Affairs, Southern Region, Chennai, within three weeks from the date of receipt of this order, failing which the Order will lapse;
- (f) The Petitioner is permitted to deliver a certified copy of this Order to the Registrar of Companies;
- (g) On such delivery and after duly complying with above directions, the Registrar of Companies, Bengaluru is directed to, on his office name and seal, publish the order in the official Gazette;



- (h) This order is confined to the violations, which ultimately led to the impugned action of striking off the Company, and it will not come in the way of Registrar of Companies to take appropriate action(s) in accordance with law, for any other violations/offences, if any, committed by the Company prior or during the striking off the Company.
- (i) The Company is directed to resume its business operations, as expeditiously as possible, after the name of Company is restored, in terms of this order.



**ASHUTOSH CHANDRA
MEMBER, TECHNICAL**



**RAJESWARA RAO VITTANALA
MEMBER, JUDICIAL**

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