

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

C.P.No.129/BB/2020  
U/s.252 (3) of the Companies Act, 2013

**BETWEEN:**

**M/s. Shakti Equipments Pvt. Ltd.**

Block No.140, House No.73/A, 76, 76/1,  
77 & 78, Opp. Hotel Sri Krishna Paradise,  
Vitawa Octroi Naka, Maharashtra,  
Thane – 400 601.

- Petitioner/Creditor

**AND**

**The Registrar of Companies, Karnataka**

'E' Wing, 2<sup>nd</sup> Floor, Kendriya Sadan,  
17<sup>th</sup> Cross, Koramangala,  
Bengaluru - 560 034.

- Respondent – 1

**M/s. Shamel Projects India Pvt. Ltd.**

No.27/1, Ground Floor, 1<sup>st</sup> Main,  
3<sup>rd</sup> Cross, HIG Colony, RMV II Stage,  
Bengaluru – 560 094.

- Respondent – 2

**Mr. Padmana Harekal Pai,**

Promoter / Director of  
M/s. Shamel Projects India Pvt. Ltd.  
2202, Anriya Greinberg, 8<sup>th</sup> Main,  
13<sup>th</sup> Cross, Near Judicial Layout,  
Allalasanra  
Bengaluru – 560 065. & 3 Others.

- Respondent – 3

**Order dated 11<sup>th</sup> 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/Creditor : Sri Arjun Amanchi, Adv.

For the Respondents : --



**ORDER**

***Per: Ashutosh Chandra, Member (Technical)***

1. C.P.No.129/BB/2020 is filed by M/s. Shakti Equipments Private Limited, ('the Petitioner/Creditor') U/s.252(3) of the Companies Act, 2013, by inter alia seeking for the restoration of the Respondent Company and to bring its Directors in the same position as if the name of the Company had not been struck off from the Register of Companies, Bengaluru for necessary legal claims of the Petitioner/Creditor in the matter and for the benefit of all other Creditors Stakeholders like Government Agency, IT Department, VAT and ROC, 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. Shamel Projects India Private Limited ('the Company') was incorporated on 10.12.2009, vide CIN:U45201KA2009PTC051814, with the Registrar of Companies, Bengaluru, Karnataka under the provision of Companies Act, 1956 with Authorised Capital of Rs.5,00,000/- and Paid-up Capital of Rs.1,00,000/- Its last registered office was situated at No.27/1, Ground Floor, 1<sup>st</sup> Main, 3<sup>rd</sup> Cross, HIG Colony, RMV II Stage, Bangalore - 560094. The main objects of the Company were to undertake, provide or engage in providing total project management services, including but not limited to project conceptualization, implementation, planning, construction and surveillance, etc.
  - (2) It is stated that the Petitioner/Creditor Company is in the capacity of creditor making this application for the restoration of the Respondent ('Shamel Projects India Pvt. Ltd.') Company under Section 252(3) of the Companies Act, 2013 since the said Respondent Company owes an outstanding amount of Rs.1,45,62,005/- to the Petitioner/Creditor Company and further the Respondent was carrying on business until



July, 2017 based on the bank statement available with Petitioner/Creditor of the Respondent Company.

- (3) It is stated that the said Respondent Company's last Balance Sheet was filed up to 31<sup>st</sup> March 2011 and the AGM was last held on 30<sup>th</sup> September, 2011. Whereas the Petitioner/Creditor was in the business of Infrastructure Machineries Hiring and Leasing Services and was the Operational Creditor of the Respondent Company since 2012, and carried out business transaction until 31<sup>st</sup> March 2017 and financial transactions until July, 2015 with the Respondent.
- (4) It is stated that the business transaction between the Respondent Company and that of the Petitioner/Creditor was of Rs.1,47,28,902/- against which an amount of Rs.79,49,230/- was received by the Petitioner/Creditor Company excluding TDS with the balance outstanding of Rs.66,27,744/-, and with interest @18% the amount due was Rs.1,26,31,935/- as on 17.07.2020.
- (5) It is also stated that the Respondent Company was carrying on business until July 2017 based on the bank statement available with Petitioner/Creditor of the Respondent Company. Further, the Respondent Company's bank statement dated 13.07.2017 with Oriental Bank of Commerce, Andheri Branch, Mumbai is showing a closing balance of Rs.2,15,79,565/-. The Respondent Company was giving assurances and confirmation for the payment until January 2018.
- (6) It is further stated that the Hon'ble Bombay High Court order in the matter of Arbitration Petition No.1363 of 2015 and Notice of Motion No.2808 of 2016 between Shamel International Industries Trading and Contracting LLC (Petitioner) Versus Shamel Projects (India) Pvt. Ltd. & Anr (Respondent) for the Settlement Agreement dated 13<sup>th</sup> April, 2017 between Petitioner and Respondent with respect to sharing of Fixed Deposit lying with Ld. Prothonotary & Senior Master High Court of Bombay proves that the Company was active and was carrying out transactions between the parties with active Bank account with the

Oriental Bank of Commerce, Andheri Branch, Mumbai. Even when entering into a settlement agreement between an Overseas Company and the Respondent Company, the Respondent Company has not mentioned anything about Struck off status in the agreement and even not to the Hon'ble Bombay High Court.

(7) From the documentary evidence reference can be found through (1) Bank Statement, (2) Outstanding confirmation from the Promoter/Director of the Respondent Company till January 2018, further supported by statement of invoices, (3) confirmation of payment transaction with the Respondent Company from the banks of the Petitioner Company, (4) Proof of the communication exchanged between the Respondent & Petitioner Company.

3. The Registrar of Companies, Karnataka, has filed a Counter Affidavit dated 03.09.2020, opposing the Petition. Apart from what has already been mentioned in the Company Petition, he has further stated, inter alia, as under:

(1) Due to non-filing of the Balance Sheets and the Annual Returns from the year 2011-12 to 2017-18, the ROC issued a notice in Form STK-1 dated 10.03.2017 to 25.04.2017 which was sent to the Company and its Directors.

(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 ROC 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 ROC as per Section 248(5) of the Companies Act, 2013.

(3) He has objected to the restoration of the name of Company, as the only purpose of restoring the Company is for the recovering of the amount from the Respondent No.2 which is not the spirit behind the provisions of Sec.252 of the Companies Act, 2013. Further it is also not assured that who will comply with the provisions of the Companies Act, 2013 for filing



overdue documents of the Respondent No.1 by paying normal and additional fees as prescribed under Sec.403 of the Companies Act, 2013, and continue the business as going concern.

4. The Petitioner/Creditor has filed an affidavit dated 25.09.2020 in reply to the ROC counter filed by the ROC, by inter alia, contending as follows:

(1) It is contended that the Credit confirmation to the Petitioner Company from the Respondent Company ('Shamel Projects India Pvt. Ltd.') signed and stamped on the Company letter head by one of its director named Jiji Jacob dated 4<sup>th</sup> April, 2017.

(2) Hon'ble Bombay High Court order dated 13.04.2017 in the matter of Arbitration/Petition No.1363 of 2015 in which the Respondent Company has been directed to settle accounts with the Petitioner named Shamel International Industries Trading and Contracting LLC a foreign company by making payment of US\$ 461,540/- from the Fixed Deposit of Rs.7,88,85,989/- and instructed Ld. Prothonary & Senior Master, High Court of Bombay to transfer balance amount of Rs.4,91,16,659 to the Respondent Company. Hence, the Company was in operation, its bank account was active, legal proceedings was alive at that time.

(3) The Respondent Company is holding a closing balance of Rs.2.15.79.565.55/- with its bank account with OBC bearing A/c No.09371011002453 as on 13.07.2017. The notice of Income Tax Department by the office of Assistant Commissioner of Income Tax, Circle 6(1)(1), Bangalore dated 27.03.2017 indicated that the Company was actively transacting through its Bank account in India.

(4) Based on the same the Petitioner in the matter is interested to recover its dues from the Respondent assets, bank balance with or without any further legal proceeding against the company on its restoration. With the necessary direction of the Bench to the Respondent Promoter/Directors for the filing of necessary Balance Sheet, Financial Statements of the Respondent Company with ROC, Bengaluru will help the Petitioner, other



Creditors and the Government agencies to know about its movable and immovable assets and its liabilities including other bank balance with the Company.

- (5) It is contended that the Company like Respondent Company is required to be restored for creating a situation which is fair and just to the Petitioner and to many other creditors with a precedent hereafter that any company which has been struck off by the action of ROC now can avail the benefit u/s. 252(3) of the Companies Act, 2013.
- (6) It is evident in the matter the ROC has not taken sufficient steps and even not made sufficient provision and therefore it is just and reasonable to restore the Company to discharge its own liabilities other than that of every Director, Manager or other Officer who was exercising any power of management in this Respondent Company.
- (7) It is seen from various decisions of the NCLT, Hon'ble High Courts and Supreme Court of India, the restoration order were rendered in different factual scenario, viz., one, where the Company whose name had been struck off from the register its members or creditors can apply for restoration before initiating any proceedings legal or otherwise, second, a situation where the Company's name had been struck off from the register had moved an application for restoration where proceedings had been initiated but no effective hearing had taken place, and last a situation where the parties, including the third parties, had acted in pursuance of such dissolution and an application for restoration came to be moved after number of years, albeit within the statutory period of limitation of 20 years.
- (8) The process of initiating liquidation against the Respondent Company under the I&B Code, under Sec.7 or 9 of the Code will only be prudent when the Petitioner in the Capacity of aggrieved creditor aware of Company's financial position which can very well be demanded on the Bench direction or order to the Respondent for placing the same or by filing with the ROC, Bengaluru after restoration.



- (9) The principle of 'finality of litigation' cannot be pressed to the extent of such situation that the struck off process through the ROC u/s. 248(1) of the Act becomes an engine of fraud in the hands of dishonest non-compliant companies to wash its hands so easily.
- (10) Applying the aforesaid principle it is clear that there is absence of full and frank disclosure; there is a misstatement of a material fact or suppression of material fact; and there is withholding of a vital fact by the Respondent Company before the ROC, Karnataka. The other legal remedies available to the Petitioner is not substantive and full proof further the very purpose of the Sec.252(3) of the Act is to protect the members, creditors and workman for the period up to 20 years from the date of strike off so that no injustice is caused to any member, creditor or workman of the company due to the strike off process U/s. 248(1) or U/s.248(2) of the Companies Act even after the protection granted U/s.248(7), 248(8) and U/s.250 of the Companies Act. Therefore the Registrar claim that the spirit of Section 252 is not for protecting creditor interest is discouraging as against the intent of the legislators and pronouncement of various judgments like of:

*Kamala Chomali Vs. Pre Press Machinery and Services Pvt. Ltd* of Hon'ble Delhi High Court CM(M) 25 of 2018 dated 29.11.2019; *V. Arunagiri Vs. A.M. Gopalan* of Hon'ble Madras High Court Civil Suit – 668 of 2005 decided on 10.01.2020; NCLT TCP No.244(MB) of 2017 Between *Commissioner of Income Tax-8, Mumbai Vs. ROC, Mumbai and Mo Tech Software Pvt. Ltd. Promoter Director U/s. 252(3)* dated 29.05.2019; *M.A. Panjwani Vs Registrar of Companies & Anr.* on 2<sup>nd</sup> Dec, 2013 in the Company Petition No. 174 of 2013 by the Hon'ble Delhi High Court.

- (11) Once the Company is restored, the Respondent Company with its Promoter/Director is to be directed by the Bench for making its assets available for meeting its liabilities to the creditors and to the petitioner by its own course, or by following up winding up process under the Companies Act or by applying through the liquidation process under the

IBC Code for meeting its liabilities of creditors, members and of other government agency out of its disclosed and undisclosed assets.

5. Mr. Arjun Amanchi, learned Counsel for the Petitioner appeared and was heard through **Video Conference**. We have carefully perused the pleadings of the Party and extant provisions of the Companies Act, 2013, and the Rules made thereunder.
6. The Petitioner admits that the Company whose name is sought to be restored filed its last balance sheet till 31.03.2011 and its AGM was last held on 30.09.2011. Transactions with that company were carried on till 31.03.2017 and financial transactions until July, 2015. Its business was carried on until July 2017. Though it had a closing balance of Rs.2,15,79,565/- as on 13.07.2017, no information is available for the period thereafter. In fact there is no further communication with the company or its Directors after 2017. There is nothing brought on record to suggest that the Company is presently doing any business or is even in existence. Even notices could not be served on the same. The ROC also mentions that the said Company did not file its Balance Sheets and the Annual Returns from the year 2011-12 to 2017-18. No response was received to the physical notices or to the website, Gazette and newspaper notices either from the Company or its Directors. Finally he 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. During these proceedings also Notice was issued to the Respondent Company during these proceedings. The same remained unserved.
7. We are also in agreement with the ROC that if an untraceable company is again taken on the Register, it cannot be ensured as to who will do the statutory compliances, such as filing of overdue Financial statements etc. as required by the Companies Act 1956/2013, and payment of additional fees etc. The order of this Tribunal is subject to such statutory compliances, and hence any order for restoration will remain on paper if the Company or its Directors are not traced out for making these compliances.



8. Under section 252(3), the interest of a member or creditor or workman of the Company is sought to be protected by restoring the name of the Company, subject to various compliances under the Companies Act, 1956/2013, so that it can commence its business, generate revenue and then pay its dues and debts. When companies are struck off the rolls of the ROC, due to non-filing of financial statements etc., there is reason to believe that they are not doing any business. Unless evidence is brought on record to the effect that the Company has commenced or intends to commence its business, or is in a state of readiness to commence business, there would be no purpose in restoring its name to the register of the ROC. The provision permits a creditor to appeal for its restoration but the purpose is not to effect recovery from a company which is not doing or going to do any business, as appears to be the case here. As regards the cases cited by the Petitioner, the same would be applicable on the differing facts of each case, and in the our considered view in the facts and circumstances of the instant case no case is made out for invoking the provisions of section 252. Without offering any opinion on merits, it may be mentioned in passing that the reference of the Petitioner to the I&B Code and proceedings contemplated thereunder is also prima facie misplaced, since the objective of the I&B Code itself is not recovery but rather resolution of insolvency. The Petition is therefore liable to be dismissed. This order would, however, not come in the way of the Petitioner seeking remedy under any other Act or before any other forum, for the recovery of any debt.
9. In view of the above discussion, **C.P.No.129/BB/2020** is hereby dismissed. No order as to cost.



**ASHUTOSH CHANDRA**  
**MEMBER, TECHNICAL**

Amar



**RAJESWARA RAO VITTANALA**  
**MEMBER, JUDICIAL**