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**NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH  
COURT NO.1**

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,  
BENGALURU BENCH, BENGALURU, HELD ON 25.09.2018

PRESENT: 1.Hon'ble member (J) **Shri Rajeswara Rao Vittanala,**  
2. Hon'ble member (T) **Dr. Ashok Kumar Mishra**

CP/CA No	Purpose	Section	Name of Petitioner	Petitioner Advocate	Name of Respondent	Respondent Advocate
CP No 255/BB/2018	For pronouncement of order	Sec 252(3)	M/s Vishnusai Infra Pvt Ltd	Vinay BL PCS	ROC	ROC report received

SL. NO. NAME (IN CAPITAL) & PHONE NUMBER

REPRESENTATION TO WHOM

SIGNATURE

VINAY. B.L  
9758108249

Vishnusai  
Infra Pvt Ltd,

PETITIONER/s :

RESPONDENT/s :

**ORDER**

Heard Shri B.L Vinay, learned PCS for Petitioner.

C.P is disposed of as dismissed, vide separate order.

MEMBER (T)

MEMBER (J)

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

C.P. No. 255/BB/2018

U/s 252 of the Companies Act, 2013  
R/w Rule 87A of NCLT Rules, 2016

In the matter of

**M/s Vishnusai Infra Private Limited**  
Represented by its Member  
**Mr. Kode Satya Prasad**  
Plot No.7, 4<sup>th</sup> Cross, Nanda School Road,  
Vidyanagar, Bellary- 583 104  
Karnataka, India

.... Petitioner

vs

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

...Respondent

**Order Delivered on: 25<sup>th</sup> September 2018**

**Coram:** 1. Hon'ble Shri Rajeswara Rao Vittalana, Member (Judicial)  
2. Hon'ble Shri Ashok Kumar Mishra, Member (Technical)

**Parties / Counsels Present:**

For the Petitioner: Shri. Vinay B. L.,  
Practising Company Secretary

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

**ORDER**

1. The Present Company Petition bearing C.P. No. 255/BB/2018 is filed by Mr. Kode Satya Prasad, Member of M/s Vishnusai Infra Private Limited ("**Petitioner**" **herein**), U/s 252(3) of the Companies Act, 2013, read with Rule 87A of NCLT Rules, 2016, by inter-alia seeking for directing the Respondent to restore the name

of Company in the Register of Companies maintained by the Registrar of Companies, Karnataka.

2. The averments made in the petition, counter and affidavits inter alia are as follows:
  - A. M/s. Vishnusai Infra Private Limited (hereinafter referred to as the “**Company**”) was incorporated on 10<sup>th</sup> August 2012 bearing CIN U45205KA2012PTC065286 having its registered office, at Plot No.7, 4<sup>th</sup> Cross, Nanda School Road, Vidyanagar, Bellary- 583 104, within the jurisdiction of this Tribunal.
  - B. The Petitioner has submitted that the aforesaid lapse was without any mala fide motive and on account of lack of legal knowledge.
  - C. It is also submitted by the Petitioner that the Company has been active since incorporation but due to lack of business projects, the Company could not start any commercial activity and has not opened any bank account. It is also submitted that the Company is in operation and the impugned action, if not set aside, shall cause irreparable loss and hardship to the Applicant as well as other stakeholders of the Company.
  - D. The Company had filed the Affidavit dated 15.06.2018 of the Directors of the Company stating that the Company undertakes to file the overdue returns such as Balance Sheets, Annual Returns and such other documents that are necessary, within 30 days from the date of restoration of name of the Company by the Registrar of Companies.
  - E. The Registrar of Companies has filed a counter dated 10.07.2018 by inter alia, contending as follows:
    - i. 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 noticed that the Company has not filed either the Balance sheet or the Annual Returns from the **year of incorporation**. Therefore, the respondent issued notice in Form STK-1 dated 16.03.2017 to the company by inter-alia, stating that it had not been 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 under Section 455 of the Companies Act, 2013. Though the company was given 30 days' time, they did not submit any response to the impugned notice. Therefore, 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) Rules, 2016, in the official website of the Ministry of Corporate Affairs on 17.07.2017 and in the official Gazette on 29.07.2017.

- ii. It is stated that appropriate notice was given to the company regarding the impugned notice, viz., STK-1, STK-5 and STK-5A. However, the company has failed to avail the opportunity given to the company. Therefore, the impugned action was taken in accordance with law.
  - iii. However, the Registrar of Companies submit that there is no enquiry, investigation and complaints against the company and the application may be considered subject to undertaking given by the company to file all pending returns within 30 days in the MCA 21 Portal from the date of receipt of the order of the Tribunal and subject to the payment of costs.
3. Heard, Shri Vinay B.L., learned Practising Company Secretary appearing for the Petitioner and also perused all the materials placed on record. Based on the submissions made in the Petition, the learned Practising Company Secretary appearing for the Petitioner urged the Tribunal to allow the petition in the interest of justice and equity.
4. The Petitioner further states that the Company has annexed to the Petition, financial statements and annual returns of the Petitioner from 31.03.2013 to 31.3.2017. The details of annual filings made from 31.03.2015 till 31.03.2017 is mentioned herein under:

Sl. No.	Particulars	For the Financial year (in rupees)		
		2014-15	2015-16	2016-17
1	Cash Balances	18,274/-	604/-	Nil
2	Other Current Assets	1,81,726/-	1,99,396/-	2,00,000/-

5. We have considered the pleadings of the parties along with the materials available on record. The Petitioner categorically admitted in para 4(v) of the petition that due to lack of appropriate business projects the company has not carried on any started any commercial activity since incorporation. It was also further stated that the Company has not opened any bank account. On perusal of the audited financials of the company, the company has not carried on any business from the financial year ending 31.3.2013 to 31.3.2017. Further on perusal of the report of the Registrar of Companies, Karnataka it is clear that the company is not carrying on any business and has not even opened any bank account. There are no 'just' grounds to order for restoration of the name of the Petitioner Company. No materials from the side of the Petitioner Company have been produced to establish that, it is a going concern at the time when its name was struck off. Therefore we are of the opinion that, the name of the Company cannot be restored. The Petition therefore deserves to be dismissed. The Petition is dismissed. No order as to costs.

  
**ASHOK KUMAR MISHRA**  
**MEMBER (TECHNICAL)**

  
**RAJESWARA RAO VITTANALA**  
**MEMBER (JUDICIAL)**