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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 18.09.2018

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.352/BB/2018	For pronouncement of order	Sec 252	M/s Vijay Software Pvt Ltd	Heeravathi PCS	ROC	ROC report received

SL. NO. NAME (IN CAPITAL) & PHONE NUMBER REPRESENTATION TO WHOM SIGNATURE

PETITIONER/s : *none present*

RESPONDENT/s :

ORDER

None appeared for Petitioner.

CP No.352/BB/2018 is disposed of vide separate orders.

Ashok
Member (T)

Rajeswara
Member (J)

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

CP No. 352/BB/2018

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

In the matter of

M/s Vijay Software Private Limited

Represented by its
Shareholder

Mr. Bharath Rangaraju

No. 19, 15th Cross, 6th Main

Lakshmanappa Garden, BSK 3rd Stage

Bengaluru – 560 085

...Petitioner

vs

The Registrar of Companies,

Karnataka

2nd Floor, E-Wing, Kendriya Sadan,

Koramangla,

Bengaluru – 560 034

... Respondent

Date of order: 18.09.2018

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

Parties / Counsels Present:

For the Petitioner:

Ms Heeravathi

PCS & Authorized Representative for the Petitioner

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

ORDER

1. The Present Company Petition bearing C.P. No. 352/BB/2018 is filed by Mr. Bharath Rangaraju, Shareholder of M/s Vijay Software Private Limited, 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 the Company in the

Register of Companies maintained by the Registrar of Companies, Karnataka as if its name had not been struck off from the Register.

2. The averments made in the petition, counter and affidavits inter alia are as follows:
 - A. M/s Vijay Software Private Limited (hereinafter referred to as the “Company”) was incorporated on 18th October, 2007 bearing CIN No. U72200KA2007PTC044168 having its registered office at No. 19, 15th Cross, 6th Main, Lakshmanappa Garden, BSK 3rd Stage, Bengaluru – 560 085, within the jurisdiction of this Tribunal.
 - B. The Petitioner has submitted that Company had made investments in various projects and had endeavored to generate revenue. The Company is carrying business and is active since its incorporation but had failed to conduct major business activities in the past few years. The Company had initiated the course of action for carrying on considerable business activities. The Shareholders of the Company are in the process of arranging funds for the survival and flourishing of the Company.
 - C. It is also submitted by the Petitioner that the Company had prepared the annual financial statements and had adopted them in the board meetings, and had also got them audited. The said financial statements have also been audited by the statutory auditors of the Company but could not file the annual financial statements and annual returns for the above mentioned financial years due to the internal disputes within the management of the Company.
 - D. The Company has filed Affidavits dated **16th April, 2018** by the Directors of the Company stating that no abnormal amounts have been deposited in the Company’s Bank Accounts during Demonetization period and further states that the Company has not received any notice from any Income Tax Authorities.
 - E. The Company has Affidavits dated **16th April, 2018** by the Directors 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 National Company Law Tribunal.
 - F. The Registrar of Companies has filed a counter dated 16th August, 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 2014-15 and onwards. Therefore, the Respondent issued notice in Form STK-1 dated 17.03.2017 and 22.03.2017 to the Company and its directors respectively, 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 petition 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.
- ii. No cause was shown either to the physical notices or to the website, Gazette and newspaper notices either by the Company or its Directors. Also since no Balance Sheet or Annual Return was filed by the Company till 21.06.2017, the impugned action was taken in accordance with law.
 - iii. However, the Registrar of Companies submit that there is no prosecution, inspection, technical scrutiny and complaint against the Company and the petition 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 Ms. Heeravathi, PCS for the Petitioner and also perused all the materials placed on record. The PCS relying on the material placed on record, 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 31.03.2015 to 31.3.2017. The details of the audited financial statements 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	Revenue from Operations	1,00,345/-	74,150/-	76,350/-
2	Non-Current Assets	14,55,191/-	14,55,191/-	14,55,191/-
3	Current Assets	2,50,355/-	2,41,561/-	2,40,761/-
4	Long Term Borrowings	17,96,157/-	17,96,157/-	17,96,157/-

5. We have considered the pleadings of the parties along with the materials available on record. As stated by the PCS, the Company is carrying on business and has non-current assets to the tune of Rs. 14,55,191/- apart from long term borrowings of Rs. 17,96,157/- to be discharged as of 31.03.2017. However, it could not comply with the Statutory Filings of the company due to internal issues in the management. Further, it is pertinent to consider that the Company has employees whose interests may be aggrieved if the Company is not restored. Therefore, this Tribunal has to take a lenient view to permit the Company to carry on the business subject to filing of annual returns and payment of costs in order to allow the Company to function.
6. By exercising the powers conferred on this Tribunal under Section 252 of the Companies Act, 2013 read with Rule 87A of NCLT Rules, 2016 and following the ratio laid down by this Tribunal in C.P. No. 209/BB/2018 dated 18th April, 2018, the Company Petition bearing **C.P. No. 352/BB/2018** is disposed of with the following directions:
- The Registrar of Companies, Karnataka, the respondent herein, is ordered to restore the name of the Company in the Register of Companies maintained by the Registrar of Companies, Karnataka as if its name had not been struck off from the Register;
 - 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;
- c. The Company's representative, who has filed the Company Petition, is directed to personally ensure compliance of this order;
 - d. The restoration of the Company's name is also subject to the payment of cost of **Rs. 30,000/- (Rupees Thirty Thousand only)** to the account of Central Government in favour of the Pay & Accounts Officer, Ministry of Corporate Affairs, Southern Region, Chennai.
 - e. The Petitioner is permitted to deliver a certified copy of this order with Registrar of Companies within thirty days of the receipt of this order;
 - f. 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;
 - g. This order is confined to the violations, which ultimately led to the impugned action of striking of 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 of the Company.


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL


(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL