

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.433/BB/2018	For pronouncement of order	Sec 252	Union Mines and Minerals Pvt Ltd	Dhiren N P PCS	ROC	

SL. NO.	NAME (IN CAPITAL) & PHONE NUMBER	REPRESENTATION TO WHOM	SIGNATURE
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PETITIONER/s: *DHIREN N.P.*  
*9740722699*

*Union Mines & Minerals*

*Dhiren*

RESPONDENT/s :

**ORDER**

Heard Shri N.P Dhiren, learned PCS for Petitioner.

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

*Ashok*  
MEMBER (T)

*Rao*  
MEMBER (J)

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*sana*

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

CP No. 433/BB/2018

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

In the matter of

**M/s.Union Mines and Minerals Private Limited**

Represented by its

Director, Shareholder & Member

**Mr. Shivakumar Giriappashivappa, Mr.Bheemasamudra Thotada Siddesh,**

**Mr.Lingaraju Gowda Mallikarjunappa**

CB Road, Bheemsamruda,

Karnataka-577520

...Petitioner

**vs**

The Registrar of Companies,

Karnataka

2nd Floor, E-Wing, Kendriya Sadan,

Koramangla,

Bengaluru-560 034

... Respondent

**Date of order:25.9.2018**

**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:

Mr.Dhiren N.P

PCS & Authorized Representative for the Petitioner

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

**ORDER**

1. The Present Company Petition bearing C.P. No. 433/BB/2018 is filed by  
**Mr.Shivakumar Giriappashivappa, Mr.Bheemasamudra Thotada Siddesh**

**and Mr.Lingaraju Gowda Mallikarjunappa**, Shareholders & Members of **M/s.Union Mines and Minerals 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 Company in the Register of Companies maintained by the Registrar of Companies, Karnataka and to place the name of the Company in the same position as if the name of the Company had not been struck off.

2. The averments made in the petition, counter and affidavits are as follows:

- A. M/s.Union Mines and Minerals Private Limited** (hereinafter referred to as the “**Company**”) was incorporated on 2<sup>nd</sup> May, 2005 bearing CIN no. **U01010KA2005PTC036189** having its registered office at C.B.Road, Bheemasamudra, Karnataka, within the jurisdiction of this Tribunal.
- B.** The Petitioner submits that the Company had duly filed application before concerned state authorities to avail Mining license for commencing its operations after complying with all requisite procedural requirements. Subsequently there was some unfortunate scam incidents occurred in the mining activities across Karnataka State and even Hon’ble Supreme Court had intervened in the activities of Mining operations of the State. The Petitioner Company further states that the process of availing mining license of the Company became stalled without any particular fault of the Company.
- C.** The Petitioner submits that the directors being basically small entrepreneurs were not well versed with the Company law and Company law related matters and despite their sincere efforts were not able to engage the services of a professional to complete the annual filings.
- D.** The Company filed Affidavit dated 20<sup>th</sup> April, 2018 of the Director of the Company undertaking to file the overdue returns such as Balance Sheet, 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 13<sup>th</sup> 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 period **2014-15 and onwards**. Therefore, the Respondent issued notice in Form STK-1 dated 17.3.2017 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. Therefore, a consolidated notice in STK-5 in English and Hindi was released in the official Gazette on 29.7.2018.
- 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 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.
- iv. It is stated that the company had duly filed its application before the concerned state authorities to avail Mining License for commencing its operations after complying with all requisite procedural requirements. But, subsequently there was unfortunate scam incidents occurred in the mining activities across Karnataka State and even Hon'ble Supreme Court had intervened in the activities of mining operations of the State. In view of the circumstances, the process of availing mining license of the company became stalled. The Petitioner further submits that striking off the company would be prejudicial in the interest of the shareholders and directors and upon restoration of the name of the

Company in the register of registrar of companies, company will file all overdue returns immediately.

3. Heard, Mr. Dhiren.N.P, PCS for the Petitioner and also perused all the materials placed on record. The PCS 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	NIL	NIL	NIL
2	LongTerm Borrowings	69,120/-	69,120/-	69,120/-
3	Current Liabilities	7,274/-	12,274/-	17,274/-

5. We have considered the pleadings of the parties along with the materials available on record. The Petitioner categorically admitted in para 6(2) of the petition that the management was duly liasoning with the concerned authorities to avail the requisite permission for the last several years. It was also further stated that the Company considering the present scenario of Mining industry and the information received from power corridors of Ministry of Mines, the Management had taken a decision to furnish an application to ROC, Karnataka for availing Dormant status for the company on the ground that the expected project will be delayed further without the default of the company. The Petitioner Company has filed an affidavit dated 6<sup>th</sup> July, 2018 stating that the Company has filed an application dated 9<sup>th</sup> May, 2005 for mining license with the Department of Mines and Geology, government of Karnataka which is currently under process. On perusal of the audited financials of the company, the company has not carried on any business

from the financial year ending 31.3.2015 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. Further on the perusal of the affidavit we find that it is not just to restore the company on the ground that the mining license application is under process, since the application is pending from 2005. 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 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**

Sirisha