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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 31.08.2018

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. 51/BB/2018	For pronouncement of order	Sec 252	Mr. Rajwanth Sing	GKM Associates	ROC	

SL. NO.	NAME (IN CAPITAL) & PHONE NUMBER	REPRESENTATION TO WHOM	SIGNATURE
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PETITIONER/s :

Chaitanya K
(8095870363)

~~Shri~~

- For GKM Associates

Chaitanya K

RESPONDENT/s :

ORDER

Shri Chaitanya K. present for the petitioner
CP dismissed by separate order

Prema Murray
Member(T)

Prema Murray.

Shri Rajeswara Rao
Member(J)

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

CP No. 51/BB/2018

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

In the matter of

M/s.Achala Energy Systems Private Limited

Represented by its

Director, Shareholder & Member

Mr.Rajwanth Singh

BMP.34, Old No.26, "MOODI",

2nd Cross, K.G.Colony, P.O.

New Thippasandra, Bengaluru-560075

...Petitioner

vs

The Registrar of Companies,

Karnataka

2nd Floor, E-Wing, KendriyaSadan,

Koramangla,

Bengaluru-560 034

... Respondent

Date of order:31.8.2018

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

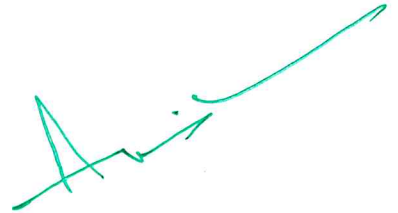
Parties / Counsels Present:

For the Petitioner:

Mr.Rakesh Bhat

Advocate & Authorized Representative for the Petitioner

Per: Shri Ashok Kumar Mishra, Member (Technical)



ORDER

1. The Present Company Petition bearing C.P. No. 51/BB/2018 is filed by **Mr.Rajwanth Singh**, Director, Shareholder & Member of **M/s.Achala Energy Systems 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.Achala Energy Systems Private Limited** (hereinafter referred to as the “**Company**”) was incorporated on 14th February, 2008 bearing CIN no.**U40102KA2008PTC045279** having its registered office at BMP.34, Old.26, “**MOODI**”, 2nd Cross, K.G.Colony, P.O. New Thippasandra, Bengaluru-560075, within the jurisdiction of this Tribunal.
 - B. The Petitioner submits that the Company could not continue its business in the energy sector as it could not obtain license from the concerned authorities. The Petitioner Company further submits that the Company is attempting for obtaining of the same.
 - C. The Petitioner submits that the accounts of the company were prepared and audited but due to inadvertance the necessary compliance under Companies Act, 2013 was not made. The Petitioner further submits that the Company has engaged the services of an external consultant to perform the task of filing the returns with the office of the Respondent.
 - D. The Company had filed the Affidavit dated 12th January, 2018 of the Directors of the Company stating that no abnormal amounts has 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 filed Affidavit dated 12th January, 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.

F. The Registrar of Companies has filed a counter dated 27th March, 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 2013-14. 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. 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 28.04.2017 and in the official Gazette on 20.05.2017 and the same was published in the newspaper in Kannada in Vijay Karnataka and in English in the Times of India on 13.05.2017.
- 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 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 due to lack of appropriate business projects the company has not carried any business activity since 1st April, 2010 and that the Company does not have any assets and liabilities and did not open any bank account and that the Company avers that the accounts of the Company were prepared and audited but due to lack of legal knowledge the necessary compliance under Companies Act, 2013 was not made and that the accounts of the company for the financial year 2010-11 to 2016-17 are ready.
3. Heard, Mr. Rakesh Bhat, Advocate for the Petitioner and also perused all the materials placed on record. The Advocate 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 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	25,000/-	25,000/-	25,000/-

5. We have considered the pleadings of the parties along with the materials available on record. The Petitioner categorically admitted in para 2(g) of the petition that the Company can carry on business in the energy sector only after obtaining of licence and the company is attempting for obtaining of the same. It was also further stated that if the Company does not obtain license necessary application will be filed under Section 455 of the Companies Act, 2013. 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. 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