

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

C.P.No.35/BB/2018

Under Section 252(3) of the Companies Act, 2013

Order delivered on: **3rd April, 2018**

Coram: Hon'ble Shri Ratakonda Murali, Member (Judicial)
Hon'ble Shri Ashok Kumar Mishra, Member (Technical)

**IN THE MATTER OF
CAYENNE DEVELOPMENTS PRIVATE LIMITED**

Cayenne Developments Private Limited
44/54, 30th Cross, Tilaknagar
Jayanagar Extension
Bengaluru- 560 041

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PETITIONER

Versus

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

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RESPONDENT

For the Petitioner (s) Mr. Badri Vishal, M/s. Srinivas & Badri Counsels,
#25/3, 2nd Floor, Levelle Road, Opp Nitesh
Buckingham Gate, Ashok Nagar, Bengaluru-560001-
Counsel for the Petitioner

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

Heard on: 02.02.2018, 21.02.2018, 05.03.2018, 09.03.2018 & 23.03.2018

O R D E R

A Director and subscribers to Memorandum & Articles of Association by name Mr. Dayananda Premchandra Sagar of the Petitioner Company **Cayenne Developments Private Limited** has filed the present Petition under Section 252(3) of the Companies Act, 2013 with a prayer for issuance of directions to the Registrar of Companies, Karnataka to restore the name of the Petitioner Company in the Register of Companies and to pass such order as deems fit in the circumstances of the case.

The averments in the Company Petition are briefly described hereunder:-

The Petitioner Company was originally incorporated on 6th May, 2011 under the name and style of “Cayenne Developments Private Limited” with the Registrar of the Companies, Karnataka and obtained Certificate of Incorporation vide bearing CIN No. U45200KA2011PTC058502. Certified copies of Certificate of Incorporation, Memorandum of Association and Articles of Association is enclosed and marked as **Annexure-B,C&D respectively.**

The Registered Office of the Petitioner Company is situated at No.44/54, 30th Cross, Tilak Nagar, Jayanagar Extension, Bangalore 560 041.

The main objects of the Company is to carry on the business of infrastructure development such as development of residential layouts, industrial layouts and construction of business towers, information technology parks, satellite towers, flyovers, roads and other infrastructure facilities, which the Company may think appropriate and useful in this behalf and to act as consultants and contractors for the similar kind of business matters, etc.

The Authorised share capital of the Company is Rs. 5,00,000/- divided into 50,000 Equity Shares of Rs. 10/- each. The Paid up Share Capital of the Company is Rs. 1,00,000/- divided into 10,000 Equity Shares of Rs. 10/- each.

It is averred in the Company Petition that, the Registrar of Companies, Karnataka has struck off the name of the Petitioner Company from the Register of Companies maintained by him due to defaults in statutory compliances vide its order dated 17.07.2017 bearing No. STK-7/ROC(B)/2017/1. A copy of the order dated 17.07.2017 is enclosed and marked as **Annexure-A.**

It is further averred that, the Directors of the Petitioner Company due to unavoidable reasons could not initiate the business of infrastructural developments and hence no operation or business was being carried out by the Company so incorporated. Since the Company was an inactive Company and was unlikely to commence business in near future, the Directors of the Petitioner Company proposed to proceed with striking off the name of the Petitioner Company from the Register of Companies under section 560 of the Companies Act, 1956/section 248(2). Hence, a notice dated 21.11.2016 was issued to convene an extraordinary general meeting of the Company on 13.12.2016 to pass a special resolution for

striking off the name of the Company from Register of Companies in terms of provisions of section 248(2). A special resolution was passed in the meeting dated 13.12.2016 wherein it was resolved that Company shall make an application in the prescribed form to strike off the name of the Company from the Register of Companies in terms of provisions of section 248(2). A copy of the special resolution dated 13.12.2016 is produced enclosed as **Annexure-E**. The special resolution dated 13.12.2016 was filed with the ROC in form MGT 14. Copy of the form MGT 14 and receipt for payment of fee for MGT 14 (GAR 7) is enclosed as **Annexure-F&G** respectively.

It is further averred that, the Directors of the Petitioner Company could not proceed with the striking off the name of the Petitioner Company as passed in the special resolution dated 13.12.2016 as the Form STK 2, required under Companies Act, 2013 for making an application to the Registrar of Companies was not available. Also since provisions of the Companies Act, 29156 with respect of striking off the name of the Company was repealed; the Petitioner was not in a position to make an application under section 560 of the Companies Act, 1956.

It is also averred that subsequently the Registrar of Companies, Karnataka has initiated proceedings under section 248(1) of the Companies Act, 2013 for the purpose of striking off the name of the Petitioner Company from the Register of Companies maintained by the ROC. The ROC issued a notice dated 17.03.2017 in form STK-1 stating that pursuant to sub section (1) and (2) of section 248 of the Companies Act, 2013, since the Company is not carrying on any business or operation for a period of two immediate receding years and has not applied for status of dormant Company under section 455, the Registrar of Companies, Karnataka shall remove the name of the Company from the Register of Companies unless a cause to the contrary is shown. The Petitioner issued a reply dated 27.04.2017 stating that the Company is indeed not carrying on any business from the past 5 years and hence intends to be struck off from the Register of Companies under section 248(2) **voluntarily**. A copy of the letter dated 27.04.2017 is enclosed and marked as **Annexure-H**.

It is further averred in the petition that, the Registrar of Companies, Karnataka ignoring the fact that the Petitioner Company itself volunteered to remove its name from the Register of Companies, issued an order dated 17.07.2017 in form STK 7 striking off the name of the said Company along with other Companies from the Register of Companies. Furthermore, the Registrar of Companies, Karnataka published a list of disqualified Directors which contained the name of the Directors of the Petitioner Company and disqualified them from being Directors from 01.11.2015 to 31.10.2020. Relevant portion of the list of disqualified Directors is enclosed and marked as Annexure-J. Subsequently, the Petitioners issued a letter dated 27.09.2017 to the Registrar of Companies, Karnataka stating that the Company had made an application for voluntarily strike off the name of the Company and in view of the same, the Directors should not be disqualified to act as Directors under section 164(2). A copy of the letter dated 27.09.2017 is enclosed and marked as **Annexure-K**. The said order of disqualification of Director has been challenged before the Hon'ble High Court of Karnataka, at Bangalore vide W.P. No.45742-43/2017. The Hon'ble High Court of Karnataka was pleased to stay the disqualification of the Directors of the Petitioner Company vide its order dated 11.10.2017. A copy of the order dated 11.10.2017 is enclosed and marked as **Annexure-L**.

It is further averred that the Ministry of Corporate Affairs issued Condonation of Delay Scheme, 2018 vide General Circular No.16/2017 giving an opportunity under Part 5(v) to the defaulting Companies whose name has been struck off and which have filed application under section 252 of the Act, upto the date of the Scheme, to file overdue documents which were due for filing till 30.06.2017 by reactivating the DIN of the Directors of the Petitioner Company. A copy of the Condonation of Delay Scheme, 2018 is enclosed and marked as Annexure-M. The Scheme shall remain in force upto 31.03.2018. The Petitioner intends to avail the benefits of Condonation of Delay Scheme, 2018. In view of the same, the Petitioner is filing this petition for restoration of the name of the Company.

It is further averred that the Petitioner Company, in the event of revival of the Company and restoration of the name of the Company in the Register maintained by the Registrar of Companies, Karnataka, shall file all outstanding statutory documents i.e., the financial statements and annual returns for the period 2011 to 2017.

The Registrar of Companies, Karnataka, Bengaluru has filed Counter Affidavit dated 7th March, 2018 along with annexures.

The Registrar of Companies, Karnataka, Bengaluru denied all the averments made in the petition except those which are specially admitted herein and submitted his report as follows that:

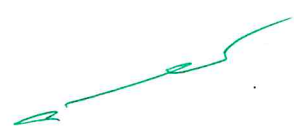
- 1) It is submitted that on verification of the MCA 21 portal in the month of March 2017 when action under Section 248(1) of the Companies Act, 2013 was initiated against the eligible Companies, it was seen that the Petitioner Company has not filed either the Balance Sheet or the Annual Returns from the date of incorporation till 2015-16. Therefore, the Respondent had reasonable cause to believe that the Petitioner Company is not carrying on any business or operation and therefore a notice in Form STK-1 dated 17.03.2017 was sent to the Company. Copy of the said notice is produced and marked as **Annexure-II**. Further, STK-1 notice dated 31.03.2017 was sent to Mr. Dayananda Premachandra Sagar and Mr. Dayananda Hemachandra Sagar, Directors of the Company to the address available in the MCA 21 portal. Copies of the notices sent to the Directors are produced and marked as **Annexure-III & IV respectively**.
- 2) In the said notice STK-1 that was sent to the Company and to the Directors of the Company, it was interalia mentioned that the Company is not carrying on any business or operation for three immediately preceding financial years nor has made any application u/s 455 of the Act and that the respondent proposes to strike off the name of the Company from the Register of Company as per Section 248 of the Act, unless a cause is shown to the contrary with 30 days from the date of receipt of the STK-1 notices.

- 3) It is submitted that 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) Rule, 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 (Kannada Edition) and in English in the Times of India on 13.05.2017 and in all the above said notices i.e. STK-1, STK-5 and STK-5A, 30 days' time was given to show cause to the contrary to the action of strike off. Copies of the notice in website, Official Gazette and paper publication in Vijay Karnataka and the Times of India are shown as **Annexure-III, IV, V & VI** respectively.
- 4) It is submitted that since neither cause was shown to either the physical notices or to the website, Gazette and newspaper notices either by the Company or by its Directors, and also since no Balance Sheet or Annual Return was filed by the Petitioner company till 21.06.2017 the day on which the list of defaulting Companies were crystallized, the Respondent proceeded to strike of the name of the Company from the Register of Companies and published a notice in STK-7 in the homepage of the MCA on 17.07.2017. A copy of the said STK-7 Notice is shown as **Annexure-VII**. It was also published 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 Register of Companies as per sec 248(5) of the Act. A copy of the publication made in the Official Gazette on 29.07.2017 is shown as **Annexure-VIII**.
- 5) The Petitioner has stated that, due to unavoidable reasons the company could not initiate the business and hence the company was an inactive company and was not likely to commence business and shall file the overdue returns in the event of restoration. It may be seen that the Registrar of Companies, Karnataka, Bengaluru has sent the STK-1 notice to the Company and its Directors exactly to the same address mentioned in the MCA 21 portal.

- 6) There is no prosecution, inspection, technical scrutiny and complaints pending against this Company.
- 7) The Petitioner has prayed that the name of the Company be restored to the Register of Companies under section 252 of the Act. Subject to the satisfaction of this Hon'ble Tribunal and in the event of this Hon'ble Tribunal willing to revive the Company, then the Respondent humbly prays that this Hon'ble Tribunal may kindly:
 - a) Direct the Petitioner to undertake to file the overdue returns upto date within 30 days in the MCA 21 portal from the date of the order of NCLT reviving the Company and comply with the provisions of Companies Act, 2013.
 - b) Direct the Petitioner to pay cost as decided by this Hon'ble Tribunal to be paid to the account of Central Government by way of a demand draft favouring the Pay and Accounts Officer, Ministry of Corporate Affairs, Southern Region, Chennai, towards the expenses incurred by the Respondent in taking Section 248 action, like postage, stationary, advertisement charges etc.
 - c) Direct the Petitioner that the revival order be automatically vacated if the above compliance is not made within a maximum period of 30 days from the date of the receipt of the order of the Petitioner.

The Respondent/ Registrar of Companies, Karnataka, Bengaluru has stated that, he exercised his power under Section 248 of the Companies Act, 2013 read with (Removal of Names of Companies from the Register of Companies) Rules, 2016 after following the procedure as per the law, giving opportunity to the Petitioner Company to file its Statutory Returns and upon non-filing of Statutory Returns the name of the Company was struck off, vide his Notice No. STK-7/ROC(B)/2017 dated 17.07.2017

The Petitioner Company prayed that the name of the Company be restored in the Register of Companies under section 252 of the Act.



Section 252(3) stipulates that:

“if a company, or any member or creditor or workman thereof feels aggrieved by the company having its name struck off from the Register of Companies, the Tribunal on an application made by the company, member, creditor or workman before the expiry of twenty years from the publication in the Official Gazette of the notice under sub-section (5) of Section 248 may, if satisfied that the company was, at the time of its name being struck off, carrying on business or in operation or otherwise it is just that the name of the company be restored to the register of companies, order the name of the company to be restored to the register of companies, and the Tribunal may, by the order, give such other directions and make such provisions as deemed just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off from the register of companies.”

We have heard the Counsel for the Petitioner Company, who contended that, due to unavoidable reasons the company could not initiate the business of infrastructural developments and hence no operation or business was being carried out by the Company so incorporated. Since the Company was an inactive Company and was unlikely to commence business in near future, the Directors of the Petitioner Company proposed to proceed with striking off the name of the Petitioner Company from the Register of Companies under section 560 of the Companies Act, 1956/section 248(2) and prayed the Tribunal to revive this Company.

The Registrar of Companies, Karnataka, Bangalore had struck off the name of the Petitioner Company from the register of companies on the ground that, the Petitioner Company has not submitted the financial statements since from its incorporation till 31/03/2016. The Registrar of Companies has filed his report. In his report he has alleged that, the Petitioner Company has not filed Annual Returns since from its incorporation till 2015-16. The Registrar of Companies has also observed that, the company was not carrying on any business.

While going through the financial statements for the year 2015-16 and 2016-17, it is observed that, the Company has "incurred" other expenses" Rs. 19,584/- (2015-16) and Rs 10,000/- (2016-17). As per Note 7 of the Accounts, the company has incurred expenses of Rs 10,000/- towards Audit fees for both the years and in addition in financial year 2015-16, the company has incurred Rs 9,584/- for office expenses. There is no revenue from operation and no other expenses incurred, as also their balance sheet reflects the same Assets of Rs 44,875/-; out of which Rs 40,000/- relates to Preliminary expenses /Incorporation Expenses and Rs 4,875/- Cash Balance. Similarly, other current liabilities is Rs 20,000/- and Rs. 10,000/- during Financial year 2016-17 and 2015-16 respectively towards Auditor's fee. This reflects that, the company is not doing any business.

The Petitioner Company has categorily admitted in para 4 (iii) of the Petition that, the company due to unavoidable reasons could not initiate the business of infrastructural developments and hence no operation or business was being carried out by the Company so incorporated. Since the company was an inactive company and was unlikely to commence business in near future, the directors of the Petitioner Company proposed to proceed with closure of the Petitioner Company and further clearly stated that, a notice dated 21.11.2016 was issued to convene an extraordinary general meeting of the Company on 13.12.2016 to pass a special resolution for striking off the name of the Company from Register of Companies in terms of provisions of section 248(2). A special resolution was also passed in the meeting dated 13.12.2016 wherein it was resolved that Company shall make an application in the prescribed form to strike off the name of the Company from the Register of Companies in terms of provisions of section 248(2). From the report of Registrar of Companies, Karnataka, Bangalore it is clear that, company was not carrying on business or any operations at the time when its name was struck off. There are no just grounds to order for restoration of the name of the Petitioner Company. No materials from the side of Petitioner Company to establish that, it was an ongoing 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 and the Registrar of Companies, Karnataka, Bangalore had rightly removed the name of the company from the register of companies. The petition is therefore deserved to be dismissed.

In the result petition is dismissed.


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL


(RATAKONDA MURALI)
MEMBER, JUDICIAL