

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

CP No. 116/BB/2018

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

In the matter of

**M/s Gourmet Boutique Foods India Private Limited**

Represented by its  
Director & Member

Mr. Haroon Sait

H No. 9, Pine View, Edward Road,  
Bengaluru – 560 001

...Petitioner

vs

The Registrar of Companies,  
Karnataka

2nd Floor, E-Wing, Kendriya Sadan,  
Koramangla,

Bengaluru – 560 034

... Respondent

**Date of order: 31.08.2018**

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:

Shri A Murali  
Advocate & Authorized Representative for the Petitioner

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

**ORDER**

1. The Present Company Petition bearing C.P. No. 116/BB/2018 is filed by Mr. Haroon Sait, Director & Member of M/s Gourmet Boutique Foods India 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 on the Register of Companies maintained by the Registrar of Companies, Karnataka as if its name had not been struck off from the rolls of the Register.

2. The averments made in the petition, counter and affidavits inter alia are as follows:
  - A. M/s Gourmet Boutique Foods India Private Limited (hereinafter referred to as the “**Company**”) was incorporated on 7<sup>th</sup> June, 2013 bearing CIN no. U15411KA2013PTC069594 having its registered office at H No. 9, Pine View, Edward Road, Bengaluru – 560 001, within the jurisdiction of this Tribunal.
  - B. The Petitioner submits that the Company was carrying on its business operations. The Company was conducting market research in India and other countries and further analyzing the industry practice before setting up its business in India, as the business of the Company was niche and not commonly undertaken in India.
  - C. It is also submitted by the Petitioner that the accounts of the Company were prepared and audited and that the Company had engaged the services of an external consultant to perform the task of filing the returns with the office of the Respondent and did not reveal this fact to the directors of the Company. It was only in October, 2017, when the balance sheet as on 31.03.2017 and the Auditor’s Report in respect thereof was ready to be filed with the Respondent that the fact of non-filing of returns and other documents with Respondent, as well as the fact that the Company’s name had been struck off the Register of Companies maintained by the Respondent, had come to the knowledge of the Company and other directors of the Company.
  - D. The Company has filed Affidavit dated 14<sup>th</sup> March, 2018 by 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 the time prescribed by the National Company Law Tribunal.
  - E. In order to corroborate their submission that the Company was carrying on its business, the Petitioner has filed an affidavit stating that during the initial years of incorporation Company was in the process of carrying on a business process study from the period 25<sup>th</sup> September, 2015 to 5<sup>th</sup> January, 2016 finally culminating in to a report. The report has been annexed to the affidavit. Further, pursuant to the business process study, the Company reached out to potential vendors and customers with the intention to establish a professionally operated

food industry in India. The email communication exchanged in this regard between the period July 2015 to November 2017 has been annexed to the affidavit. The Company has filed a trademark application bearing no. 3664991 dated 28<sup>th</sup> October, 2017 pending before the Trademark Registry, Chennai for registration of the mark "Gourmet Boutique".

F. The Registrar of Companies has filed a counter dated 11<sup>th</sup> April, 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 2014-2015. Therefore, the Respondent issued notice in Form STK-1 dated 16.03.2017 and 31.03.2017 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.

3. Heard, Shri A Murali, learned counsel for the Petitioner and also perused all the materials placed on record. The learned counsel 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 31.03.2014 to 31.3.2017.
5. We have considered the pleadings of the parties along with the materials available on record. As stated by the learned counsel, the Company is yet to earn revenue as it is in the process of conducting surveys for research purposes and has invested in the same and it has incurred expenses due to the same in the financial years 2014-2015, 2015-2016 and 2016-2017. We have seen the business process study report conducted for the period from period 25<sup>th</sup> September, 2015 to 5<sup>th</sup> January, 2016. The Company in pursuance of the objects of the Company has reached out to potential vendors and customers with the intention to establish a professionally operated food industry in India pursuant to the research conducted during the years 2015-2017. It is pertinent to consider that the Company has filed a trademark application bearing no. 3664991 dated 28<sup>th</sup> October, 2017 pending before the Trademark Registry, Chennai for registration of the mark "Gourmet Boutique". Further, the Company is carrying some current assets and current liabilities to be discharged as of 31.03.2017. In light of the same, we are of the view that restoration of the Company is covered under "just" ground as entailed in Section 252(3) of the Companies Act, 2013. However, the Company could not comply with the Statutory Filings of the company due to failure of the professional engaged to ensure the statutory compliance. 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 18<sup>th</sup> April, 2018, the

Company Petition bearing **C.P. No. 116/BB/2018** is disposed of with the following directions:

- a. The Registrar of Companies, Karnataka, the respondent herein, is ordered to restore the name of the Company on the Register of Companies maintained by the Registrar of Companies, Karnataka as if its name had not been struck off from the rolls of the Register;
- b. 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