

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

CP No. 440/BB/2018

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

In the matter of

M/s.Adeshwar Stones India Private Limited

Represented by its
Director, Shareholder & Member

Mr.Sanjay Bakliwal
#381/A, 1st Cross, 4th Block,
Koramangala, Bangalore
Karnataka-560034

...Petitioner

vs

The Registrar of Companies,
Karnataka
2nd Floor, E-Wing, Kendriya Sadan,
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 H.M
PCS & Authorized Representative for the Petitioner

Per: Shri Ashok Kumar Mishra, Member (Technical)

ORDER

1. The Present Company Petition bearing C.P. No. 440/BB/2018 is filed by
Mr.Sanjay Bakliwal, Shareholder & Member of **M/s.Adeshwar Stones 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 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.Adeshwar Stones India Private Limited** (hereinafter referred to as the “**Company**”) was incorporated on 19th March, 2012 bearing CIN no. **U26960KA2012PTC063103** having its registered office at #381/A, 1st Cross, 4th Block, Koramangala, Bangalore-560034, within the jurisdiction of this Tribunal.
 - B. The Petitioner submits that the Company is in operation. The Petitioner submits that the Company has been active since incorporation and has also been maintaining all requisite documentation. The Petitioner submits that the accounts of the Petitioner Company were prepared and audited to perform the task of filing the returns with the office of the Registrar of Companies and in the mean time the company was struck off by the Registrar of Companies.
 - C. It is also the submitted by the Petitioner that the Company has regularly held its AGM and the accounts of the Company have been audited every year and that therefore, it cannot be concluded that the Company is defunct or non-functional within the meaning of Section 248 of the Companies Act, 2013. It is also averred that the management is carrying on business activities.
 - D. The Company filed an affidavit dated 29th June, 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 vide the above mentioned Affidavit dated 29th June, 2018 of the Directors 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 1st 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 **2013-2014**. Therefore, the Respondent issued notice in Form STK-1 dated 17-03-2017 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 17.7.2017 and in the official Gazette on 29.07.2017.
- 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, Mr. Rakesh H.M, 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 31.03.2013 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	Fixed Assets	27,34,004/-	27,34,004/-	27,34,004/-
2	Long Term Borrowings	25,30,400/-	25,30,400/-	25,30,400/-

5. We have considered the pleadings of the parties along with the materials available on record. As stated supra, the company is Operational & doing business. But, the Petitioner states that the Company being operational, restoration of the name of Company is essential to pay off all the liabilities and loan from directors. The Petitioner further submits that the accounts of the Petitioner Company were prepared and audited to perform the task of filing the returns with the office of the Registrar of Companies and in the mean time the company was struck off by the Registrar of Companies. The Company also has Fixed Assets and Long-Term Borrowings. The Company is desirous of carrying on the business activities so mentioned in the Memorandum of Association in ensuing financial statements.
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 the 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.440/BB/2018 is disposed of with the following directions:
 - a. The Registrar of Companies, the respondent herein, is ordered to restore the name of Company in the Register of Companies maintained by the Respondent;

- 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) cost 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