

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

CP No. 376/BB/2018

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

In the matter of

M/s Aryah Software Solutions Private Limited

Represented by its
Shareholder & Member

Mr. Naveen Kumar
51, 2nd floor, CMH Road
Indiranagar
Bengaluru – 560 038

...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 Abhilash M K and Mrs. P Dakshayani
PCS & Authorized Representatives for the Petitioner

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

ORDER

1. The Present Company Petition bearing C.P. No. 376/BB/2018 is filed by Mr. Naveen Kumar, Shareholder & Member of M/s Aryah Software Solutions 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.

2. The averments made in the petition, counter and affidavits inter alia are as follows:
 - A. M/s Aryah Software Solutions Private Limited (hereinafter referred to as the “Company”) was incorporated on 7th May, 2002 bearing CIN no. U73100KA2002PTC030463 having its registered office at 51, 2nd floor, CMH Road, Indiranagar, Bengaluru – 560 038, within the jurisdiction of this Tribunal.
 - B. The Petitioner submits that the Company is going concern and very much in operations. The main objects of the Company as mentioned in the Memorandum of Association inter alia state to carry on the business as traders, dealers, agents, facilitators, distributors, exporters and importers of all kinds of Biometric Technology (BT) Solutions. Further, the Company is a closely held company which is in operation with valid registrations with GST and other authorities.
 - C. It is also submitted by the Petitioner that the Company is regular in filing the returns with the statutory authorities and has conducted the Annual General Meetings since inception in compliance with the provisions of the Companies Act, 1956/2013. That the non-filing of returns was inadvertent and by oversight due to administrative lapse and does not involve any malafide intention.
 - D. The Petitioner has stated that no abnormal amounts have 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 Petitioner has stated that the Company undertakes to file the overdue returns such as Balance Sheets, Annual Returns and such other documents that are necessary, within 30 days from the date of restoration of name of the Company by the National Company Law Tribunal.
 - F. In order to corroborate their submission that the Company was carrying on its business, the Petitioner has filed copies of acknowledgement of filing of income tax returns for the assessment years 2015-2016, 2016-2017 and 2017-2018, copy of GST provisional registration certificate, copies of the Bank Statements showing their active involvement in business for the period 1.11.2016 to 31.03.2017. Further, the Petitioner has also filed copies of purchase order and invoice raised in favour of the Company in the year 2018.

- G. The Registrar of Companies has filed a counter dated 27th July, 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 2014-15. Therefore, the Respondent issued notice in Form STK-1 dated 16.03.2017 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.
3. Heard, Shri Abhilash M K, PCS for the Petitioner and also perused all the materials placed on record. The PCS 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 31.03.2015 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	1,39,70,337/-	97,51,297/-	99,47,372/-
2	Non-Current Assets	25,46,294/-	48,43,735/-	56,58,795/-
3	Current Assets	1,43,34,941/-	1,24,92,440/-	1,55,41,703/-
4	Long Term Borrowings	8,39,355/-	14,14,151/-	19,93,554/-
5	Current Liabilities	1,43,95,027/-	1,43,13,472/-	1,79,93,595/-

5. We have considered the pleadings of the parties along with the materials available on record. As stated supra, the Company is carrying on business. But, it could not comply with the Statutory Filings of the company due to administrative lapse, inadvertence and oversight and does not involves any malafide intention. Further, it is pertinent to consider that the Company has employees whose interests may be aggrieved if the Company is not restored. 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 18th April, 2018, the Company Petition bearing **C.P. No. 376/BB/2018** is disposed of with the following directions:
- The Registrar of Companies, Karnataka, the respondent herein, is ordered to restore the name of Company in the Register of Companies maintained by the Registrar of Companies, Karnataka;
 - 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