

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

CP No. 419/BB/2018

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

In the matter of

M/s.Bharat Thakur's Fresh Farm Private Limited

Represented by its

Director, Shareholder & Member

Mr. Bharat Dinishchandra Thakur

House No.65, SY.No.123/3,& 123/4,

BM Kaval Village, Kengeri Hobli,

Bangalore, South Kengeri,

Bangalore-560060

...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)

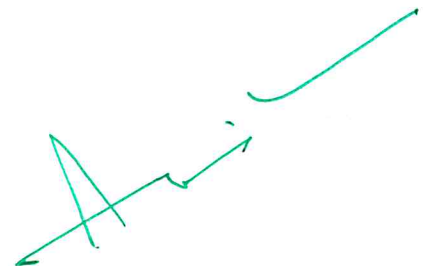
Parties / Counsels Present:

For the Petitioner:

Mr. Kala Agarwal

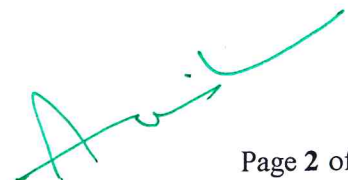
PCS & Authorized Representative for the Petitioner

Per: Shri Ashok Kumar Mishra, Member (Technical)



ORDER

1. The Present Company Petition bearing C.P. No. 419/BB/2018 is filed by **Mr. Bharat Dinishchandra Thakur**, Shareholder & Member of **M/s. Bharat Thakur's Fresh Farm 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. Bharat Thakur's Fresh Farm Private Limited** (hereinafter referred to as the "**Company**") was incorporated on 25th June, 2013 bearing CIN no. **U01407KA2013PTC069827** having its registered office at House No.65, SY.No.123/3 & 123/4, BM Kaval Village, Kengeri Hobli, Bangalore, South Kengeri, Bangalore-560060, 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 on account of lapse on the part of employee who was assigned the task of looking after statutory compliance missed out in filing of Annual Returns.
 - C. It is also 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 vide the above mentioned Affidavit dated 1st 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.



E. The Registrar of Companies has filed a counter dated 10th 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 of incorporation. 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.Kala Agarwal, 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 31.03.2014 to 31.3.2017. The Company is carrying current assets. The Company has revenue from operations of Rs.31,61,827/- for the financial year ending on 31.3.2015 and Rs.75,97,821/- for the financial year ended on 31.3.2014.
5. We have considered the pleadings of the parties along with the materials available on record. As stated supra, the company is carrying current assets and Trade Payables. But, it could not comply with the Statutory Filings of the company as the company had engaged the services of practising professional to perform the task of filing returns with the office of the Registrar of Companies and the said person has not filed the necessary returns by oversight. 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 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. 419/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

Sirisha