

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

C.P. No. 435/BB/2018

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

In the matter of

M/s H.M.G. Eco-Care Recycling Private Limited

Represented by its Member

Mr. Syed Khitaj Islam

C-22, 3rd Cross,

KSSIDC Industrial Estate,

Kumbalgodu, Mysore Road,

Bangalore- 560060

Karnataka, India

.... Petitioner

vs

The Registrar of Companies,

Karnataka

2nd Floor, E-Wing, Kendriya Sadan,

Koramangla,

Bengaluru-560 034

...Respondent

Order Delivered on: 28th August 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:

Ms. Rajashree Devchoudhury,
M/s N. Jayaraman & Associates,
Advocate

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

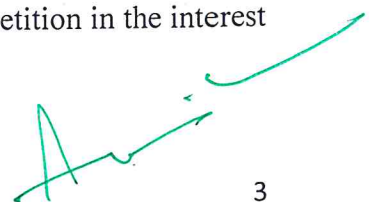
ORDER

1. The Present Company Petition bearing C.P. No. 435/BB/2018 is filed by Mr. Syed Khitaj Islam, Member of M/s H.M.G. Eco-Care Recycling Private Limited ("Petitioner" herein), 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 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. H.M.G. Eco-Care Recycling Private Limited (hereinafter referred to as the “Company”) was incorporated on 15.09.2011 bearing CIN U37100KA2011PTC060429 having its registered office, at C-22, 3rd Cross, KSSIDC Industrial Estate, Kumbalgodu, Mysore Road, Bangalore- 560060, within the jurisdiction of this Tribunal.
 - B. The Petitioner has submitted that the aforesaid lapse was without any mala fide motive and on account of lapse by the professionals engaged for the compliance of statutory requirements. It is submitted by the Petitioner that the Company had completely depended upon the Statutory Auditors for the purposes of filing the necessary documents in connection with the statutory compliance.
 - C. It is also submitted by the Petitioner that the Company has been active and has been carrying on its business activities and maintaining all the required documents as stipulated under Companies Act, 2013. It is also submitted that the Company is in active and the impugned action, if not set aside, shall cause irreparable loss and injury to the Company. It is also submitted by the Petitioner that neither the Company nor the Directors received any notice from the Respondent.
 - D. The Company had filed the Affidavit dated 10.07.2018 of 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 30 days from the date of restoration of name of the Company by the Registrar of Companies.
 - E. In order to corroborate their submission that the Company was carrying on its business, the Petitioner has filed its Income Tax Returns for the Assessment Years 2013-14 and 2015-16 showing their active involvement in business.

- F. The Registrar of Companies has filed a counter dated 01.08.2018 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 to the company 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 application 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 17.07.2017 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 enquiry, investigation and complaints against the company and the application 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, Ms. Rajashree Devchoudhury, learned counsel for the petitioner and also perused all the materials placed on record. Based on the submissions made in the Petition, the learned counsel 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 31.03.2012 to 31.3.2017. The details of annual filings made 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	Non-Current Assets	5,46,037/-	5,41,524/-	19,09,690/-
2	Current Assets	2,31,14,698/-	2,15,44,412/-	2,48,23,431/-
3	Total Revenue	4,31,59,098/-	3,58,03,706/-	2,83,45,050/-
4	Current liabilities	1,12,03,297/-	93,72,128/-	1,40,14,978/-
5	Non-current liabilities	1,15,22,957/-	1,15,22,957/-	1,15,22,957/-

5. We have considered the pleadings of the parties along with the materials available on record. As stated supra, the company is doing business. But, it could not comply with the Statutory Filings of the company due to lapse by the professionals engaged for the compliance of statutory requirements. 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. 435/BB/2018 is disposed of with the following directions:
- The Registrar of Companies, the respondent herein, is ordered to restore the name of Company in the Register of Companies maintained by the Registrar of Companies as if its name had not been struck off from the rolls of the Register;
 - 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.50,000/-** (Rupees Fifty 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)