

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

C.P. No. 383/BB/2018

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

In the matter of

M/s Shantinath Marketing Private Limited

Represented by its
Shareholder & Member

Mrs. Saroj Chhajer

No 14/14, II Floor 59th Cross,
Bashyam Circle, Rajajinagar,
V Block, Bangalore- 560010
Karnataka, India

.... Petitioner

vs

The Registrar of Companies,
Karnataka
2nd Floor, E-Wing, Kendriya Sadan,
Koramangla,
Bengaluru-560 034

...Respondent

Order Delivered on: 31st 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:

Mrs. Sumana Rao,
Practising Company Secretary

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

ORDER

1. The Present Company Petition bearing C.P. No. 383/BB/2018 is filed by Mrs. Saroj Chhajer, Shareholder & Member of M/s Shantinath Marketing Private Limited ("**Petitioner**" herein), U/s 252(3) of the Companies Act, 2013, read with


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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 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. Shantinath Marketing Private Limited (hereinafter referred to as the “Company”) was incorporated on 27.02.2007 bearing CIN U51909KA2007PTC041913 having its registered office, at No 14/14, II Floor 59th Cross, Bashyam Circle, Rajajinagar, V Block, Bangalore- 560010, within the jurisdiction of this Tribunal.
 - B. The Petitioner has submitted that the aforesaid lapse was without any mala fide motive. It is submitted by the Petitioner that the Company has prepared audited financials and Annual returns and Annual general Meetings from time to time as per the provisions of the Act. It is further averred that for some unknown reason the officials have failed to upload the audited and signed documents from 2007-08 till 2015-16. It is also submitted that the Company is continuing its regular operations and that the impugned action, if not set aside, shall cause irreparable loss and prejudice to the Company.
 - C. The Company had filed the Affidavit dated 29.05.2018 of the Shareholder 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.
 - D. The Company vide the same Affidavit dated 29.05.2018 of the Shareholder 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 copy of Bank statements for the financial year 2016-17 and 2017-18 as well as a copy of invoices raised on Bajaj Allianz General Insurance Company during financial years 2016-17 and 2017-18, copy of Service Tax Payment Challan for the financial years 2016-17 and

2017-18 to show their active involvement in business. Various TDS deducted from the business proceeds have been reflected in their Form 26 AS for the financial year 2015-16.

F. The Registrar of Companies has filed a counter dated 26.07.2018 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 **2007-08** till **2015-16**. 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 28.04.2017 and in the official Gazette on 20.05.2017 and the same was published in the newspaper in the newspaper in English in Times of India and in Kannada in Vijay Karnataka (Kannada edition) 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 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, Mrs. Sumana Rao, learned Practising Company Secretary appearing for the petitioner and also perused all the materials placed on record. Based on the submissions made in the Petition, the learned Practising Company Secretary appearing for the petitioner 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 Memo dated 29.05.2018, financial statements and annual returns of the Petitioner from 31.03.2015 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	Nil	Nil	12,53,715/-
2	Current Assets	48,154/-	47,812/-	14,17,388/-
3	Revenue from Operations	Nil	Nil	42,67,136/-
4	Current liabilities	95,500/-	1,10,500/-	15,73,530/-

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 owing to some unknown reason due to which the officials have failed to upload the audited and signed documents from 2007-08 till 2015-16. 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. 383/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 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)