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**NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
COURT NO.1**

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
BENGALURU BENCH, BENGALURU, HELD ON 28.09.2018

PRESENT: 1.Hon'ble member (J) **Shri Rajeswara Rao Vittanala**,
2. Hon'ble member (T) **Dr. Ashok Kumar Mishra**

| CP/CA No | Purpose | Section | Name of Petitioner | Petitioner Advocate | Name of Respondent | Respondent Advocate |
|-------------------|----------------------------|------------|------------------------------|-----------------------------------|--------------------|---------------------|
| CP No.384/BB/2018 | For pronouncement of order | Sec 252(3) | M/s SKN hydro Energy Pvt Ltd | Manoj Kumar Koyalkar & others PCS | ROC | |

SL. NO. NAME (IN CAPITAL) & PHONE NUMBER

REPRESENTATION TO WHOM

SIGNATURE

PETITIONER/s :

RESPONDENT/s :

ORDER

None present. CP disposed of by separate order.


Member(T)

Prema Murray - Steno.




Member(J)

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

C.P. No. 384/BB/2018

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

In the matter of

M/s SKN Hydro Energy Private Limited

Represented by its Member

Mr. Penumetsa Chiranjeevi

No. S-70, KEC Colony, 3rd Cross,

1st Main, Near Manasa Hospital,

Basaveshwara Nagar, Bangalore- 560079

Karnataka, India

.... Petitioner

vs

The Registrar of Companies,

Karnataka

2nd Floor, E-Wing, Kendriya Sadan,

Koramangla,

Bengaluru-560 034

...Respondent

Order Delivered on: 28th September 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. Manoj Kumar Koyalkar,
Smt Kushbu Vijayvargi, &
Shri V. Panneer,
Practising Company Secretaries

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

ORDER

1. The Present Company Petition bearing C.P. No. 384/BB/2018 is filed by Mr. Penumetsa Chiranjeevi, Member of M/s SKN Hydro Energy 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 as if its name had not been struck off.

2. The averments made in the petition, counter and affidavits inter alia are as follows:

- A. M/s. SKN Hydro Energy Private Limited (hereinafter referred to as the “Company”) was incorporated on 13.01.2005 bearing CIN U40101KA2005PTC035426 having its registered office, at No. S-70, KEC Colony, 3rd Cross, 1st Main, Near Manasa Hospital, Basaveshwara Nagar, Bangalore- 560079, within the jurisdiction of this Tribunal.
- B. The Petitioner has submitted that the aforesaid lapse was without any mala fide motive as the Accounts officer failed to file the returns with the Registrar of Companies in time and the Directors were under the impression that the same had been filed.
- C. It is also submitted by the Petitioner that the Company is engaged in the business of generation of electrical power through various sources of energy and also in water-works sector and that the Company is exploring opportunities for growth and is also earning revenues. It is submitted that the Company has three employees and is incurring the employee benefit expenditure. The Applicant has entered into an agreement on 05th June, 2017 with Dhanunjaya Homes Private Limited for providing professional consultancy services.
- D. The Petitioners have quoted a passage from the judgment of Hon’ble Bombay High Court in the matter of *Purshottamdas & Another vs. Registrar of Companies, Maharashtra & others*, (1986) 60 Comp Cas 154 (Bom) as follows:

“The objects of section 560(6) of the Companies Act is to give a chance to the company, its members and creditors to revive the company which has been struck off by the Registrar of Companies, within a period of 20 years, and to give them an opportunity of carrying on the business only after the company judge is satisfied that such restoration is necessary in the interests of justice.”

- E. The Company has undertaken 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.
- F. The Company has further undertaken that the overdue returns such as Balance Sheets, Annual Returns and such other documents that are necessary, upon restoration of name of the Company by the Registrar of Companies.
- G. The Registrar of Companies has filed a counter dated 27.08.2018 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 2011-12 onwards. 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, Shri V. Panneer, learned Practising Company Secretary appearing for the Petitioner and also perused all the materials placed on record. Based on the submissions made, 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 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 | 13,79,940/- | 13,79,940/- | 13,79,940/- |
| 2 | Current Assets | 8,58,860/- | 8,56,060/- | 8,51,960/- |
| 3 | Revenue from Operations | 1,34,000/- | 1,58,000/- | 1,72,000/- |
| 4 | Current liabilities | 60,000/- | 70,000/- | 80,000/- |
| 5 | Non-current liabilities | 21,00,000/- | 21,00,000/- | 21,00,000/- |

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 as the Accounts officer failed to file the returns with the Registrar of Companies in time and the Directors were under the impression that the same had been filed. 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. 384/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;
- 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.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)

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