

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

C.P.No.147/BB/2017

Under Section 252(3) of the Companies Act, 2013

Order delivered on: **15TH January 2018**

**IN THE MATTER OF
MERLIN HYDRAULICS PRIVATE LIMITED**

**Merlin Hydraulics Private Limited
M-12, Industrial Estate, Udyambag,
Belgaum-590008.** -

PETITIONER

Versus

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

RESPONDENT

Coram: Hon'ble Shri RatakondaMurali, Member (Judicial)
Hon'ble Shri Ashok Kumar Mishra, Member (Technical)

For the Petitioner (s) Mr. Abhijit Atur, Agraa Legal, 2nd Floor,
Shivashankar Plaza, 19, Lal Bagh Road, Richmond
Circle, Bengaluru-560027, Counsel and Authorised
Representative for the Applicant.

Per: **Hon'ble Shri Ratakonda Murali, Member (Judicial)** – Author

Heard on: 18/10/2017, 25/10/2017, 08/11/2017, 13/11/2017, 01/12/2017,
07/12/2017, 15/12/2017 & 04/01/2018

O R D E R

The Petitioner Company **Merlin Hydraulics Private Limited** has filed the present Petition under Section 252(3) of the Companies Act, 2013 with a prayer for issuance of directions to the Registrar of Companies, Karnataka to restore the name of the Petitioner Company in the Register of Companies and to pass such order as deems fit in the circumstances of the case.

The averments in the Company Petition are briefly described hereunder:-

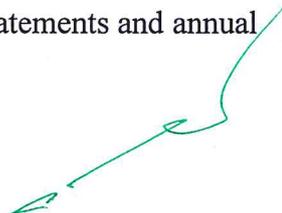
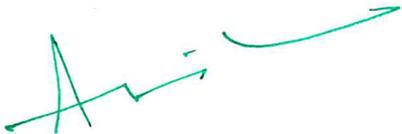
The Petitioner Company was originally incorporated on 23rd September 2005 under the name and style of "**Merlin Hydraulics Private Limited**" with the Registrar of the Companies, Karnataka and obtained Certificate of Incorporation vide bearing CIN No. **U29120KA2005PTC037322**.

The Registered Office of the Petitioner Company is situated at M-12 Industrial Estate, Udyambag, Belgaum-590008.

The main objects of the Company are to carry on in India or elsewhere the business as designers, researchers, developers, manufacturers, buyers, assemblers, modifiers, installers, re-conditioners, sellers, hirers, sub sellers, market makers, dismantlers, repairers, operators, exporters, importers, distributors, and to act as agent, broker, consignor, C & F agent, indenting agent, representatives, correspondent or otherwise to deal in all its branches in automatic, semi automatic, manual and other types of tools, tackles, instruments, apparatus, system and equipments including hydraulic machines, power pack precision, machines parts, lathes, turret lathes, capstan lathes or other treated and to do all incidental acts and things necessary for the attainment of above objects etc., Details of the objects of the Company are mentioned in the Memorandum and Articles of Association of the Petitioner Company.

The Authorised share capital of the Company is Rs 4,00,000/- divided into 40,000 equity shares of Rs 10/- each and the Paid-up Share Capital is Rs 1,00,000/- divided into 10,000 Equity Shares of Rs 10/- each fully paid up.

It is averred in the Company Petition that, the Company's name has been struck off by the Registrar of Companies, Karnataka, Bengaluru on 17th July 2017 vide Notice No. STK-7/ROC(B)/2017/1 due to non-filing of statutory compliances viz., Financial Statements and Annual Returns for the period 2014-15 and 2015-16. The Directors of the Petitioner Company feels aggrieved for striking of the name of Company from the Register of companies, because if the name of the company is not restored by the register of companies, it will incur huge loss and also will cause hardship to the company, its creditors, members and workmen's. It is further averred that the, company has been active since incorporation and has also been maintaining all the requisite documentation, as per the provisions of the companies Act, 2013. Latest audited financials are produced as a proof that Company is carrying on business at the time of strike off and further averred that, the company had filed its financial statements and annual



returns upto the financial year ending 31st March 2014. It is further averred that, the Company has failed to file its Financial Statements and Annual Returns for the period 2014-15 and 2015-16, due to inadvertence and without any intention on the part of the Company or its Directors. It is further averred that, the Petitioner Company shall file all outstanding statutory documents i.e., Financial Statements and Annual Returns for the period 2014-15 and 2015-16 alongwith applicable fee soon after its restoration.

The Counsel for the Petitioner has stated that, the Company has filed this petition within the limits laid down under section 252(3) of the Companies Act, 2013.

The Registrar of Companies, Karnataka, Bengaluru has filed Counter Affidavit dated 12th December 2017 along with annexure.

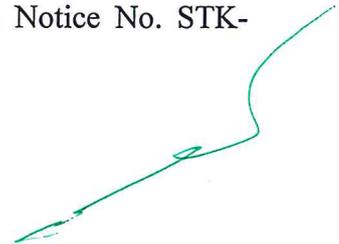
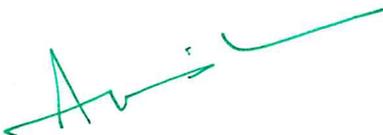
The Registrar of Companies, Karnataka, Bengaluru denied all the averments made in the petition except those which are specially admitted herein and submitted his report as follows that:

- 1) 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 seen that the Petitioner Company has not filed either the Balance Sheet or the Annual Returns from the year 2014-15 to till 2015-16. Therefore, the Respondent had reasonable cause to believe that the petitioner company is not carrying on any business or operation and therefore a notice in Form STK-1 dated 17/03/2017 was sent to the company. Copy of the said notice is produced ad marked as **Annexure-II**. Further, STK-1 notice dated 31/03/2017 was sent to Mr. Snehal Nandakishor Pandit, Ms. Angeli Snehal Pandit, Mr. Dinesh Sadashivrao Ambewadikar and Mr. Sahil Snehal Pandit Directors of the Company. Copies of the notices sent to the Directors are produced and marked as **Annexure-III, IV, V & VI** respectively.

- 2) In the said notice STK-1 that was sent to the company and the directors of the company, it was mentioned that the petitioner company has defaulted in filing of the returns for two immediately preceding financial years and that the respondent proposes to strike off the name of the company from the Register of company as per Section 248 of the Companies Act, 2013 unless a cause is shown to the contrary with 30 days from the date of receipt of the STK-1 notices.
- 3) It is submitted that 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) Rule, 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 (Kannada Edition) and in English in the Times of India on 13.05.2017 and in all the above said notices i.e. STK-1, STK-5 and STK-5A, 30 days' time was given to show cause to the contrary to the action of strike off. Copies of the notice in website, Official Gazette and paper publication in Vijay Karnataka and the Times of India are shown as **Annexure- VII, VIII, IX & X** respectively.
- 4) It is submitted that since neither cause was shown to either the physical notices or to the website, Gazette and newspaper notices either by the Company or its Directors, and also since no Balance Sheet or Annual Return was filed by the Petitioner company till 21.06.2017 the day on which the list of defaulting companies were crystallized, the Respondent proceeded to strike off the name of the Petitioner Company from the Register of Companies and published a notice in STK-7 in the homepage of the MCA on 17.07.2017. A copy of the said STK-7 Notice is shown as **Annexure -XI**. It was also published in the official Gazette on 29.07.2017 stating that from 17.07.2017 names of the companies mentioned therein including the petitioner company have been struck off from the Register of Companies as per sec 248(5) of the Act. A copy of the publication made in the Official Gazette on 29.07.2017 is shown as **Annexure-XII**.

- 5) It is stated in the petition that, the company has admitted to not filing the annual reports and balance sheets in para 5 (a) (2) of their petition. The company has not filed the Balance Sheet and the Annual Report for the year 2014-15 & 2015-16. It may be seen that the ROC has sent the STK-1 notice to the company and its Directors exactly to the same address mentioned in the MCA-21 Portal. The petitioner though has claimed in the petition that, it is a functioning company, and has enclosed the copies of the Balance Sheet of the year 2016-17 in annexure B of the Company petition herein, as per which it is a functioning company.
- 6) Though the Petitioner has prayed that the name of the company be restored to the Register of Companies under section 252 of the Act. Subject to the satisfaction of this Tribunal and in the event of this Hon'ble Tribunal willing to revive the company, then the Respondent humbly prays that this Hon'ble Tribunal may kindly,
- a) Direct the petitioner to undertake to file the overdue returns upto date within 30 days in the MCA 21 Portal from the date of the order of NCLT reviving the company and comply with the provisions of Companies Act, 2013;
 - b) Direct the Petitioner to pay cost as decided by this Hon'ble Tribunal to be paid to the account of Central Government by way of a demand draft favouring the Pay and Accounts Officer, Ministry of Corporate Affairs, Southern Region, Chennai, towards the expenses incurred by the Respondent in taking Section 248 action, like postage, stationary, advertisement charges etc.
 - c) Direct that the revival order be automatically vacated if the above compliance are not made within a maximum period of 30 days from the date of the receipt of the order of the Petitioner.

The Respondent/ Registrar of Companies, Karnataka, Bengaluru has stated that, he exercised his power under Section 248 of the Companies Act, 2013 read with (Removal of Names of Companies from the Register of Companies) Rules, 2016 after following the procedure as per the law, giving opportunity to the Petitioner Company to file its Statutory Returns and upon non-filing of Statutory Returns the name of the Company was struck off, vide his Notice No. STK-7/ROC(B)/2017/1 dated 17th July 2017.

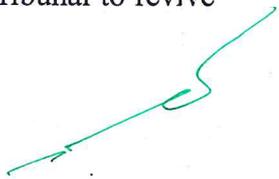


It is also averred from the report of Registrar of Companies, Karnataka, Bengaluru the Petitioner Company has committed default in not filing the Statutory Returns for the Financial Years 2014-15 to till 2015-16 before the Respondent i.e. Registrar of Companies. The Directors are willing to continue the company since it is advantageous and favourable to them to have the same company name for extending the business activities and also stated that the company was carrying on business at the time of strike off and that the company is a genuine operational company involved in carrying on in India and elsewhere the business as researchers, manufacturers, sellers, exporters, importers, of plant and machinery which are used in Industries. The Petitioner Company prayed that the name of the Company be restored in the Register of Companies under section 252 of the Act. The copies of the Audited Balance Sheet for the said period are shown at **Page No.33 to 42)**

Section 252(3) stipulates that:

“if a company, or any member or creditor or workman thereof feels aggrieved by the company having its name struck off from the Register of Companies, the Tribunal on an application made by the company, member, creditor or workman before the expiry of twenty years from the publication in the Official Gazette of the notice under sub-section (5) of Section 248 may, if satisfied that the company was, at the time of its name being struck off, carrying on business or in operation or otherwise it is just that the name of the company be restored to the register of companies, order the name of the company to be restored to the register of companies, and the Tribunal may, by the order, give such other directions and make such provisions as deemed just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off from the register of companies.”

We have heard the Counsel for the Petitioner Company, who contended that, the Petitioner Company was carrying on business at the time of strike off and that the company is a genuine operational Company. However, inadvertently the company not filed the Financial Statements and Annual Returns for the year ended 31st March 2015 and 31st March 2016. He further contended that, the Applicant Company will submit necessary filing of Financial Statements and Annual Returns soon after restoration of the name of the company with the Registrar of Companies, Karnataka- Bengaluru and prayed the Tribunal to revive this Company.



After hearing the Counsel for the Petitioner Company and perusal of the material on record, the report of the Registrar of Companies, Karnataka and on going through the provisions of Section 252(3) of the Companies Act, 2013. This Tribunal is of the view that the company was in existence and it is a going concern and name of the Company to be restored in the Register of Companies as maintained by Registrar of Companies. The name of the Company be ordered to be restored and

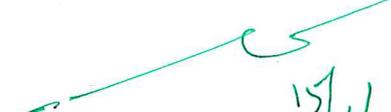
THIS TRIBUNAL DO FURTHER ORDER:

The Petitioner Company shall within 30 (thirty) days of the date of the receipt of this order cause a certified copy of this Order along with the copies of Audited Balance Sheet and all other Statutory filings for the period 2014-15, 2015-16 and for subsequent year in the prescribed format as required under the Companies Act, 2013 be filed with the Registrar of Companies, Karnataka, Bangalore

The Petitioner Company is also directed that, the revival order will be vacated if the above compliances are not made within the minimum period of 30 days from the date of receipt of this order by the Petitioner Company. The Petitioner Company is directed to pay Rs. 50,000/- as cost to the account of Central Government in favour of the Pay & Accounts Officer, Ministry of Corporate Affairs, Sothern Region, Chennai and D.D. drawn to be handed over to Registrar of Companies, Karnataka Bangalore.

The Registrar of Companies, Karnataka, Bengaluru is further directed to restore the name of the Petitioner Company i.e. **Merlin Hydraulics Private Limited** in the Register of Companies within a period of 15 days from the date of this order, after accepting the Audited Balance sheets and related financial statements and other Statutory Returns after charging additional fee as may be applicable as required under the Companies Act, 2013.


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL


(RATAKONDA MURALI)
MEMBER, JUDICIAL

15/1/18