

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

C.P.NO.148/BB/17

Under Section 252(3) of Companies Act, 2013

IN THE MATTER OF
SKYLUX TELELINK PRIVATE LIMITED
Vs
REGISTRAR OF COMPANIES, KARNATAKA

Coram: 1. Hon'ble Shri. Ratakonda Murali, Member Judicial
2. Hon'ble Shri. Ashok Kumar Mishra, Member Technical

Order delivered on 12th January, 2018

For the Petitioner (s): Sankalpa Associates

#36/2, 16th Cross, 4th Temple Street,
Mallechwaram, Bangalore-560003

Per: Hon'ble Shri. Ratakonda Murali, Member Judicial

Heard on. 18.10.2017, 25.10.2017, 08.11.2017, 17.11.2017, 15.12.2017, 04.01.2018

SKYLUX TELELINK PRIVATE LIMITED

#694/B, Block-A, 2nd Main Vinayaknagar,
Airport Road, Bangalore-
Attavara, Mangalore, Dakshina Kannada-575002

Vs

REGISTRAR OF COMPANIES, KARNATAKA

'E' Wing, 2nd Floor, Kendriya Sadana,
Kormangala, Bangalore-560034.

ORDER

The Petitioner Company M/s. Skylux Telelink Private Limited has filed the present petition under Section 252(3) of the Companies Act, 2013 with a prayer for issuance of

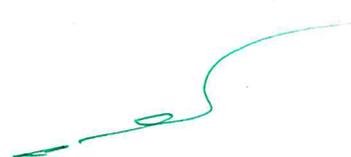
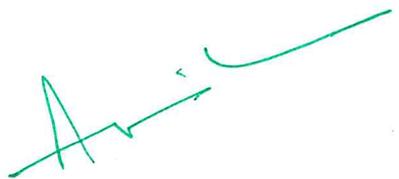
directions to the Registrar of Companies, Karnataka to restore the name of the Company as originally existed in its register and continue its name on the Registrar of Companies

The averments made in the petition are as follows:

The Petitioner Company was originally incorporated on 12th January, 2005 under the name and style of "Skylux Telelink Private Limited" in the State of Karnataka vide CIN No.U64202KA2005PTC035416. The Registered Office of the Petitioner Company is situated at NO.694/B, Block-A, 2nd Main, Vinayakanagar Airport Road, Bangalore-560017.

The Authorised Capital of the Petitioner Company is Rs.1,00,000/- divided into 10000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital is Rs.1,00,000/- divided into 10,000 of Rs.10/- each.

The object of the Petitioner Company is to carry on the business of resellership of call center technology products, made in U.S.A. or other countries, to provide total sales and support pertaining to the call center Technology products and software products in India, to engage in web applications development, to develop, design, structure, establish, maintain and to setup the business of handling customer support, technical help desk services, range of Voice/web base contact and front office services that span collections, Sales & Marketing, Technical Help Desk and Customer Care for requests received by telephone, fax, email, web, kiosk, post or any other mode through which any customer can communicate by accessing information in possession of the company or provided by the client from abroad, to setup state of art software development centres and develop customised software technology for web hosting, speech to text, text to speech and other related software fields and to setup facilities for video conferencing, internet telephoning and other related fields. **The copy of Memorandum of Association and Articles of Association is shown in Annexure-01.**



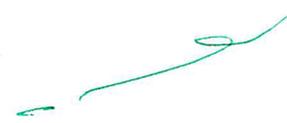
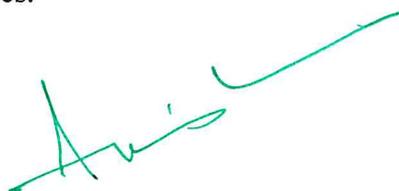
The Petitioner Company states that its name has been struck off by the Registrar of companies, Karnataka in the month of July, 2017. The Petitioner Company further states that petitioner has not received any notice pertaining to this issue from the respondent.

The Petitioner states that the petitioner company has been active since incorporation and has also been maintaining all requisite documentation, as per the provisions of the Companies Act, 2013.

It is further averred that the Petitioner Company had duly prepared the Financial Statements for the year 2014-15 and 2015-16 but due to oversight/miscommunication the company had not filed the same with ROC Karnataka which has resulted in striking off the name of the company from the register of ROC.

The Petitioner further submits that it was only in September, 2017, when the balance sheet as on March 31, 2017 and the Auditor's report in respect thereof was ready to be filed with the Respondent that the fact of non-filing of the returns and other documents with the, Respondent as well as the fact that the Petitioner Company's name had been struck off the Register maintained by the Respondent, was made known to the petitioner company. directors were travelling during said period and they were not aware of the notice served by the Registrar of companies, Karnataka under Section 248(1) of the Companies Act, 2013 in Form STK-1. Since the Registrar of Companies did not receive any response within 30 days of the notice the name of the Company was struck off. **The copies of audited financial statements for the Financial year 2014-15 and 2015-16 as Annexure-5(a) and 5(b).**

The Petitioner Company had filed the Affidavit dated 3rd November, 2017 of the Director of the Petitioner 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.



The Petitioner Company had filed another affidavit of the Director of the Petitioner Company stating that no abnormal amount has been deposited into the Company's account during demonetisation period and no Income Tax notice has been served to the appellant company on this issue.

The Registrar of Companies has filed Counter affidavit dated 20th December, 2017 along with the Annexures. The Registrar of Companies herein denies all the averments made in the Petition save the averments which are specially admitted herein below and submit his counter to the Petition as under:

- i.) The Petitioner Company is registered with the Registrar of Companies on 23/09/2005 with CIN.No. U64202KA2005PTC035416 and as per the records of the Company in MCA 21 portal. The Registered Office address is No.694/B, Block-9, 2nd Main, Vinayaknagar, Airport Road, Bangalore-560017. The copy of the Company Master Data is shown as **Annexure I**.
- ii.) It is submitted that on verification of the MCA 21 Portal in the month of March 2017 when action under section 248(1) of the Companies Act, 2013(hereafter called as the 'Act') 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 2015-16 to till 2016-2017. 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 17th March, 2017 was sent to the company. The copy of the said notice is shown as **Annexure II**. Further STK-1 notice dated 22/03/2017 was sent to Mr.Niranjn Virupaksha and Mr.Mujeeb Abdul Pazhakkaraillath Directors of the company to the address available in the MCA 21 portal. Copies of the notices sent to the Director are produced and marked as Copies of the notices sent to the Directors are produced and marked as Annexures III respectively.
- iii.) 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 Sec 248 of the Act unless a cause is shown to the contrary with 30 days from the date of receipt of the STK-1 notices.

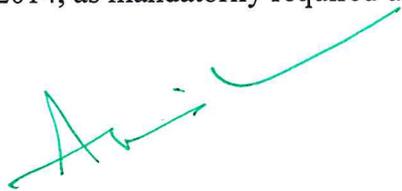
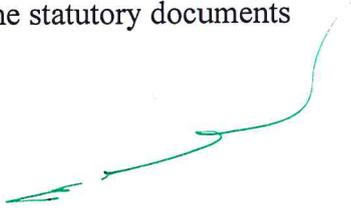
- iv.) It is submitted that a consolidated notice in STK-5 in English and Hindi was released as per Rule 7 of the Companies (Removal of name of Companies from the Register of Companies) Rule, 2016, in the Official website of the Ministry of Corporate Affairs on 28.04.2017 and in the official Gazette 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 notice 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 – IV, V, VI respectively.**
- v.) 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 by its Directors, and also since no Balance Sheet or Annual Return was filed by the Petitioner company till 20.06.2017 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 12.10.2017. A copy of the said STK-7 Notice is shown as **Annexure –VII.** It was also published in the official Gazette on 29.07.2017 stating that the 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 the publication made in the Official Gazette on 29.07.2017 is shown as **Annexure-VIII.**
- vi.) It is stated in the petition that, the duly prepared and audited book of accounts of the petitioner company the company secretary, whose services were engaged the petitioner had not filed on time due to oversight/miscommunication, resulting in striking of the name of the name of the Company from the register of the ROC.

vii.) The Petitioner has prayed that the name company be restored to the Register of Companies under section 252 of the Act. Subject to the satisfaction of this Hon'ble 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) To dismiss the prayer no.12(a)(i) praying the set aside the impugned notice dated 17/07/2017 as the petitioner company was a fit case to be struck off U/s 248 as the returns for two immediately preceding financial years the company did not file the returns and did not object to any of the notice either sent to the company or its directors or the public notice sent as said in Part No.4 to 6.
- b) 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;
- c) Direct the Petitioner to pay costs as decided by this Hon'ble Tribunal to be paid to the account of Central Government 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.
- d) 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 Registrar of Companies has exercised its power under Section 248 of the Companies Act, 2013 read with (Removal of name 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.

On perusal of the affidavit of the Registrar of Companies, it appears that the name of the company was struck off, for failure on the part of the company to file the statutory documents since 2014, as mandatorily required under the Act.

The Petitioner Company has committed a default in not filing the Statutory Returns for the Financial Years 2014-15 to till 2015-2016 before the Respondent i.e. Registrar of Companies. The Petitioner in order to show that the company was carrying out business on the date of receipt of notice in Form STK-1 as well as on the date of struck off provided Audited Balance Sheet for the Period from 2014 -2015 till 2015-2016 along with this Petition to show its bonafide of carrying the Business. **The copies of the Audited Balance Sheet for the said period are shown as Annexure VII & VIII of the petition.**

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."

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 name of the Company to be restored in the Register of Companies as maintained by Registrar of Companies.

THIS TRIBUNAL DO FURTHER ORDER

The Petitioner Company shall within 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 other Statutory filings for the period of default i.e. from 2014-2015 to till 2015-2016 and the

subsequent year in prescribed format as required under the Companies Act, 2013 be filed with the Registrar of Companies,

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 is further directed to restore the name of the Petitioner company i.e. SKYLUX TELELINK PRIVATE LIMITED in the Registrar of Companies within a period of 15 days from the date of this order, after charging necessary fee as may be applicable and also to accept Balance Sheet and other Statutory Returns after charging additional fee as required under the Companies Act, 2013.


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL


(RATAKONDA MURALI)
MEMBER, JUDICIAL