

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

C.P.No.222/BB/2017

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

Order delivered on: 17TH January 2018

**IN THE MATTER OF
ASEEM HOSPITALITY PRIVATE LIMITED**

**Aseem Hospitality Private Limited
1103, 20th Cross, 14th Main,
3rd Sector, HSR Layout,
Bengaluru-560034. -**

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. Saji P.John, Advocate, SPJ Legal, Unit No.1002,
10th Floor, # 30, Prestige Meridian Il M G Road,
Bengaluru 560001 Counsel and Authorised Representative
for the Petitioner Company.

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

Heard on: 14/12/2017, 08/01/2018 & 17/01/2018

O R D E R

The Petitioner Company ~~Aseem Hospitality 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 made in the Company Petition are briefly described hereunder:-

The Petitioner Company was originally incorporated on 27th August 2003 under the name and style of "Nurse Link Private Limited" with the Registrar of the Companies, Karnataka and obtained Certificate of Incorporation vide bearing CIN No. **U55101KA2003PTC032453**. Subsequently, the company has changed its name to "Aseem Hospitality Private Limited" on 24th May 2014.




The Registered Office of the Petitioner Company is situated at 1103, 20th Cross, 14th Main, 3rd Sector, HSR Layout, Bengaluru-560034.

The main objects of the Company is to carry on the business of identifying, training, placement, recruitment of nurses, doctors, pharmacists, medical staff; to carry on business as placement consultants, recruitment consultants to provide nurses, doctors, pharmacists, medical staff to hospitals, clinics, medical laboratory, nursing homes, diagnostic centres, other types of medical institutions in United States of America and other countries; and to establish, provide and maintain laboratories, training colleges, schools and other institutions for training of nurses, doctors, medical staff and conducting research education and instruction of students 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 5,00,000/- divided into 50,000 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.

It is averred in the Company Petition that, the Petitioner Company has shifted its Registered office from 2730, Trinkannika, 80 Ft. Road, Indiranagar, Bangalore-560038 to 1103, 20th Cross, 14th Main, 3rd Sector, HSR Layout, Bengaluru-560034, but due to oversight the same has not been reported to the Registrar of Companies, Karnataka, Bengaluru, as a result of which the Applicant Company has not received the STK-2 Notices, inadvertently, the Applicant Company was not able to furnish any representation alongwith the copies of the relevant documents/objections to the said notices. Consequent to the same,

Respondent has published the name of the Company in the Official Gazette on 17th July 2017, vide Notice No. STK-7/ROC(B)/2017/1(item No., 864). Copy of the Notification dated 17th July 2017 issued by the Registrar of Companies, Karnataka, Bengaluru under Section 248(5) of the Companies Act, 2013 and copy of Master Data is shown as **Annexure D & F**.

It is further averred that the, operations of the Company are continued to this date and the Bank statement upto August 2017 is furnished and shown as **Annexure-G**. Further the Company has filed income tax return upto 31/03/2017 and the same is shown as **Annexure-H**.

It is also averred that, the Petitioner Company has kept ready all pending financials for the year ending 31/03/2015, 31/03/2016 and 31/03/2017 and is ready for filing with the Registrar of Companies, Karnataka, Bengaluru which is enclosed and shown as **Annexure-F**.

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 8th January 2018 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 16/03/2017 was sent to the company. Copy of the said notice is produced and marked as **Annexure-II**. Further, STK-1 notice dated 22/03/2017 was sent to all Directors of the Company to the address available in the MCA 21 portal. Copies of the notices sent to the Directors are produced and marked as **Annexure-III**.

- 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- IV, V & VI** 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 -VII**. 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-VIII**.
- 5) It is stated in the petition that, the Company has shifted its Registered Office address from Indira Nagar to HSR Layout but due to oversight the same has not been reported to Registrar of Companies, Karnataka, as a result of which the Applicant Company has not received the STK-1 notices, and that therefore, the Applicant Company was not able to furnish any representation along with the copies of the relevant documents/objections to that notices and also that the company is also ready for filing of annual filings for the year ended on 31/03/2015, 31/03/2016 and 31/03/2017 with Registrar of Companies, Karnataka.

- 6) There is no inquiry, investigation and complaints against this company.
- 7) 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 compliances 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.

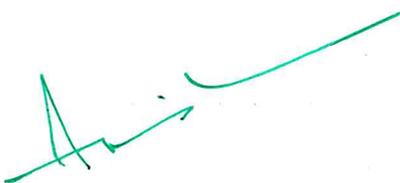
It is also averred from the report of Registrar of Companies, Karnataka, Bengaluru the Petitioner Company has committed default in not filing the Statutory Returns for the Financial Years 2014-15 to till 2015-16 before the Respondent i.e. Registrar of Companies. The Directors are willing to continue 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 the business of identifying, training, placement, recruitment of nurses, doctors, pharmacists and Medical Staff. 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 financial years 2014-15 to till 2015-16 are shown at **Page No.47 to 77)**

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. The Counsel for the Petitioner Company further filed Affidavit dated 5th January 2018 of the Directors of the Company giving justification for restoration of the Company in the Register of Companies as maintained by Registrar of Companies, Karnataka, Bengaluru.

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. **Aseem Hospitality Private Limited** in the Register of Companies within a period of 30 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