

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

**C.P.No.5/BB/2018**

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

Order delivered on: **22<sup>nd</sup> January 2018**

**IN THE MATTER OF  
M/S SUVEE IMPEX PRIVATE LIMITED  
VS.  
REGISTRAR OF COMPANIES, KARNATAKA**

M/s Suvee Impex Private Limited  
Jai Tulsi Chambers, No.101  
1<sup>st</sup> Floor, No.12, K.H.Road  
Bengaluru, Karnataka – 560 027

.. PETITIONER

Versus

The Registrar of Companies  
2<sup>nd</sup> 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): M/s J.Sudharshan & Co., PCS

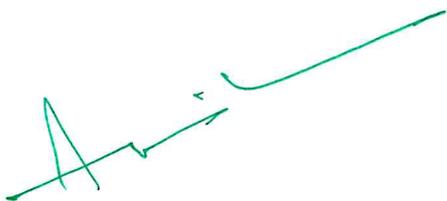
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Per: **Hon'ble Shri Ashok Kumar Mishra, Member (Technical) – Author**

Heard on: 05.01.2018, 15.01.2018

**O R D E R**

The Petitioner Company M/s Suvee Impex Private Limited along with its Members viz., Mr.Vinod Kumar Nahata and Mr.Sumer Mal Nahata have 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 deemed 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 21.03.1996 under the name and style of "M/s Suvée Impex Private Limited" with the Registrar of the Companies, Karnataka and obtained Certificate of Incorporation bearing CIN No. U30007KA1996PTC020104.

The Registered Office of the Petitioner Company is situated at Jai Tulsi Chambers, No. 101, 1<sup>st</sup> Floor, No.12, K.H.Road, Bengaluru – 560 027.

The authorised share capital of the Company is Rs.25,00,000/- divided into 2,50,000/- equity shares of Rs.10/- each. The issued, subscribed and paid up share capital of the Company as on the date of application is Rs.24,47,000/- comprising of 2,44,700 fully paid up equity shares of Rs.10/- each.

The Petitioner Company states that the main object is: (1) To carry on the business of manufacturers, assemblers, buyers, sellers, indenter's, hirers, repairers, importers, exporters, promoters, agents, representatives, designers, trainers, system engineers, system analysts and consultants of all types of computers including minicomputers workstations, computerised automation systems for communication, medical, commercial, industrial, environmental, process control, chemical and scientific applications as also other allied products and things capable of being used therewith or in the manufacture, maintenance, repair and working thereof and to function as consultants and advisers either honorary or for consideration to individuals, firms, bodies corporate, corporation or local authorities, Government Departments in business, industry, management, engineering, technological and research fields. (2) To carry on business as manufacturers, designers, trainers, buyers, sellers, indentors, hirers, repairers, importers, exporters, promote agency representatives and consultants of all kinds of peripherals associated equipment such as printers, power supplies, scanners, plotting devices, digitizers mouse line drivers, line receivers, modems, paging and data acquisition systems. (3) To carry on business as designers, engineers,

manufacturers, buyers, trainers, sellers, indenters, hirers, importers, exporters, agents and dealers of all types of computer software including operating systems, compilers, peripheral equipment drivers, controllers and all other aspects of system software including system consultancy, architecture and analysis for all applications and to develop and implement application software packages such as accounting CAD/CAM/CAE invoicing, word processing, automatic mailing, inventory, testing, inspection, packaging, data acquisition, monitoring and control required in manufacturing industries, agencies and enterprises of all types. (4) To conduct research and development of computers, mini computers microprocessors based systems, components, sub-systems software, systems integration, communications, including hardware, firmware and software developments, product designs and packaging, computer networks, communications protocols, multi user, multi terminal systems. (5) To carry on the business of trading in all kinds of hardware, cutleries, glass and its products, textiles, fabrics and the like.

The Petitioner Company further states that as per the details in MCA-21 portal of the Ministry of Corporate Affairs, the Registrar of Companies has published public notice (STK-5) u/s 248(1) of the Companies Act, 2013, a copy of which has been produced as Annexure-7. However, neither the Company nor the Directors of the Company viz., Mr. Vinod Kumar Nahata and Mr. Sumer Mal Nahata have received the notice u/s 248(1) of the Companies Act.

The Practicing Company Secretary has submitted that, the Company has come to know that the status of the Company has been marked as "Struck off" stating that the Company has not been carrying on any business or operations for a period of two immediately preceding financial years. The Notice STK-7 u/w 248(5) of the Companies Act, 2013 dated 17.07.2017 vide Annexure-8 was issued calling for reply within thirty days.

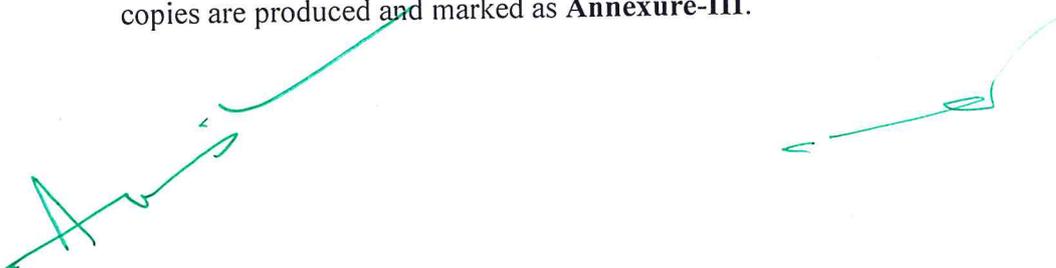
It is submitted by the Petitioner Company that the Company had filed its financial statement upto the financial year ending 31.03.2014 and the relevant Annual Return for the said period u/s 137 and 192 of the Companies Act, 2013 which are produced as Annexure-4. The Company further submits that the non-

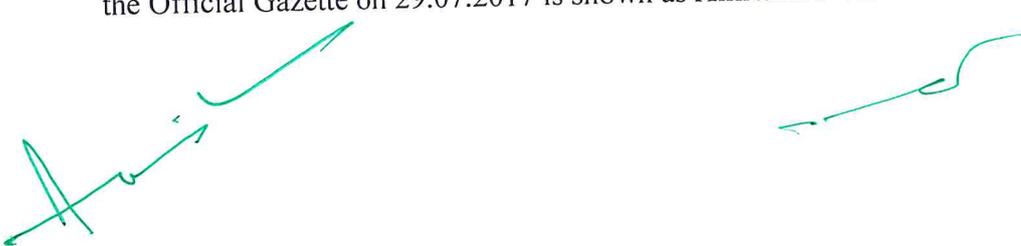
filing of the financial statements for the F.Y. 2014-15 and 2015-16 and annual returns for the said period were unintentional and due to some managerial issues which were beyond their control. It is further stated that the Company is carrying on its operations as a going concern and removal of the name of the Company from the Register of Companies will adversely affect the efforts of the Company to scale up its business activities and that the applicants are ready and willing to comply with any direction of this Tribunal, Registrar of Companies or any other authorities by complying with the requirements under law.

The Practicing Company Secretary has also stated that, the Appellant has filed this petition within the limit laid down under section 252(3) of the Companies Act, 2013 and will take action to streamline the activities of the company in compliance with the requisite statutory provisions.

The Registrar of Companies, Karnataka, Bengaluru has filed Counter Affidavit dated **9<sup>th</sup> January 2018** along with Annexures.

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

- 1) 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 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 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 14/03/2017 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 the Directors of the Company. Copies of the notices sent to the Directors to the address available in the MCA 21 portal and the said copies are produced and marked as **Annexure-III**.
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- 2) That 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) 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 **Annexures- V, VI, & VII respectively.**
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- 4) 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 way of 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 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.**
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- 5) That the applicant company has stated that it was carrying on its business on a going concern basis from inception till date and has recorded a good turnover and earning profits from the business as on date. The company submits that it has recorded profits during the last 3 years and it has obtained VAT as well as GST registrations 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 the Registrar of Companies.
- 6) That there is no inquiry, investigation and complaints pending against the company.
- 7) That 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) 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 a 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 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 17<sup>th</sup> July 2017.

It is also averred from the report of Registrar of Companies, Karnataka, Bengaluru that the Petitioner Company has committed a default in not filing the Statutory Returns for the Financial Years 2014-15 to 2015-16 before the Respondent i.e. Registrar of Companies. The Petitioner Company was carrying on the business in the said default period and the Petitioner Company has also filed the Audited Balance Sheet for the Period between 2014-15 to 2015-16 along with this Petition to show its bona fide of carrying on the Business.

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 Practicing Company Secretary for the Petitioner Company, who contended that, the company is doing its business on a going concern basis in the best possible manner and due to some financial crises was not able to upload the balance sheet and annual returns for the preceding two financial years and further contended that, the company has taken necessary initiative measures to improve the business in the coming years and prayed the Tribunal to revive this Company.

After hearing the Practicing Company Secretary 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 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 financial years 2014-15 to 2015-16 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 temporarily 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 is further directed to restore the name of the Petitioner Company i.e. M/s Suvee Impex 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