

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

C.P.NO.169/BB/17

Under Section 252(3) of Companies Act, 2013

IN THE MATTER OF
M/S EURO CLEAN VACUUM PRIVATE LIMITED
Vs
REGISTRAR OF COMPANIES, KARNATAKA

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

Order delivered on 22nd January 2018

For the Petitioner (s): Mr. D.Dushyantha Kumar, PCS

For the Respondent (s):

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

Euro Clean Vacuum Systems Private Limited
No.409. A Wing, 4th Floor, Mittal Tower
M.G.Road, Bengaluru - 560 001

.. Petitioner

Vs

REGISTRAR OF COMPANIES, KARNATAKA

'E' Wing, 2nd Floor, KendriyaSadana,
Kormangala, Bangalore-560034

.. Respondent

Heard on: 03.11.2017, 28.11.2017, 18.12.2017, 05.01.2018

ORDER

The Petitioner Company Euro Clean Vacuum Systems 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 register of Registrar of Companies

The averments made in the petition are as follows:

The Petitioner Company is a private limited company incorporated on 4th December, 2006 in the State of Karnataka vide **CIN No.U29304KA2006PTC041089**. The Registered Office of the Petitioner Company is situated at No.409, A Wing, 4th Floor, Mittal Tower, M.G.Road, Bengaluru-560001.

The object of the Petitioner Company is to carry on the business of manufacture, import, export and sale of vacuum systems on its own behalf and/or on behalf of third parties, to market vacuum systems manufactured by the company or by third parties on contract basis on own brands or other brand both locally and in the overseas market, to deal in the above items on commission basis both in the local market and overseas, to take up contracts of providing services for maintenance of vacuum systems/equipments/gadgets.

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

The details of the Directors of the Company who were in office as on the date of “strike off” and whose names appear in the Master Data as the signatories of the Company are as follows:

Name of the directors	Father's Name	DIN	Address
Sanjeev Kumar Mehta	Parkash Chand Mehta	01361847	House No.12, Road No.70, Punjabi Bagh, New Delhi, India – 110026
Mario Malesani	Pietro Malesani	02359409	Via Ciro Di Pers, 15 Udine – 33100, Italy

The Petitioner Company states that it had carried on business after its incorporation and had generated operating income and had filed the annual financial statements as well as

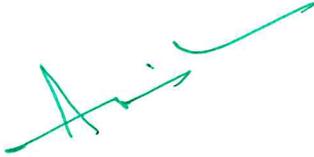
the annual returns with proper annexures with the Registrar of companies without default till the financial year 2013-14.

The Petitioner Company further states that it was able to generate income by way of sale of products as well as services. The Company had also filed VAT Returns regularly as per the State VAT legislation which indicates that the Company had carried on an activity and had not remained quiescent or inactive in any manner. The Petitioner Company also stated that the Company is generating good amount of revenue from the business activities carried on by the Company.

The Petitioner Company further states that the financial statements also depict significant accounting transactions such as long term borrowings, short term loans and advances given by the Company. It is also stated that the Company had made some non-current investments and also possesses certain fixed assets that are shown in the statement of fixed assets appended to the Balance Sheet. The Company has also inventories in place and therefore the Company is a going concern in all respects in view of facts stated above. The Company states that the financial statements are filed before this Tribunal.

It is also stated that the Company had also carried on significant transactions through the Company Bank Account with the Axis Bank bearing account No.913020056898038. The said account was never inactive or in a dormant stage and payments have been made and received in the said account which reflects that the Company was a going concern in all respects. Further though the financial statements in accordance with the provisions of the Companies Act, 2013 were prepared, the same were inadvertently not filed with the Registrar of Companies.

The Petitioner Company further states that the Company has taken all steps to ensure that the financial and other statements are drawn up in right earnest and intends to file the



same with the Registrar of Companies to ensure due compliance with the provisions of law. The petitioner further declares that upon restoration of the name of the Company in the Register of Companies, it shall file all returns required to be filed statutorily with the Registrar of Companies, Karnataka on or before the time prescribed by the Hon'ble Tribunal in this regard.

The Petitioner Company has filed the Affidavits dated 7th November, 2017 of the Directors of the Petitioner Company stating that no abnormal amounts has been deposited in the Company's Bank Accounts during Demonetization period and further states that the Petitioner Company has not received any notice from any Income Tax Authorities.

The Petitioner Company had filed the Affidavit dated 7th November, 2017 of the Directors 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 Registrar of Companies has filed Counter affidavit dated 18th November, 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:

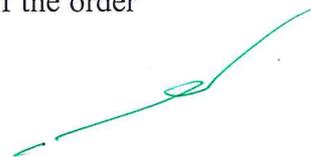
- i.) The Petitioner Company is a private limited company incorporated on 04.12.2006 vide **CIN No.U05190KA2003PTC032633**. The Registered Office of the Petitioner Company is situated at No.409, A Wing, 4th Floor, Mittal Tower, M.G.Road, Bengaluru -- 560 001. The copy of the Company Master Data is shown 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 2014-15 to 2015-2016. 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 with a copy of the same to Mr. Sanjeev Kumar Mehta and Mr. Mario Malesani, Directors of the company to the address available in the MCA 21 portal. The copies of the said notices are shown as **Annexures II & 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 within 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 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 & VIII 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 of 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 –IX**. 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-X**.

- vi.) It is stated in the petition that the applicant company is an active company and has prepared the financial statement in accordance with the Companies Act, 2013 but had unintentionally failed to file the financial statements for the years 2014-15 and 2015016 with the Registrar of Companies. It has also stated in the petition that the company has initiated the process of filing of the financial statements and annual returns and it was at that point it came to know that the name of the Company has been struck off by 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) 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 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.
 - 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.

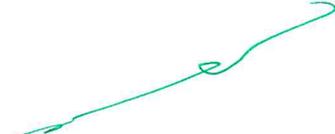
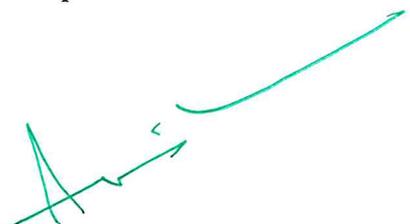


The Registrar of Companies has exercised its power under Section 248 of the Companies Act, 2013 read with (Removal of name of Companies from the Register of Companies) Rules, 2016 after following the procedure as per the law, giving opportunity to the Petitioner Company to file its Statutory Returns 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 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 between 2014 -2015 & 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 at page Nos.35 to 59.**

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."



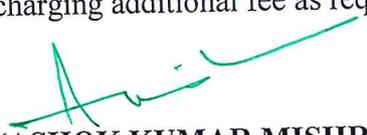
After hearing the Counsel for the Petitioner Company and perusal of the material on record the report of the Registrar of Companies, Karnataka and ongoing through the provisions of Section 252(3) of the Companies Act, 2013, This Tribunal is of the view that the company was in existence and it is a going 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 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. M/S EURO CLEAN VACUUM 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