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

C.P.No.224/BB/2017

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

Order delivered on: **24th January 2018**

**IN THE MATTER OF
TIME EXPRESS (INDIA) PRIVATE LIMITED
VS.
REGISTRAR OF COMPANIES, KARNATAKA**

Time Express (India) Private Limited
204, II Floor, Sadath Court 5/6
Magrath Road
Bengaluru, Karnataka -- 560 025

.. PETITIONER

Versus

The 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. Gowri Shankar Mishra, PCS

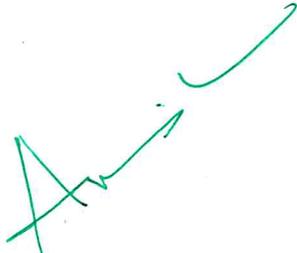
Per: **Hon'ble Shri Ashok Kumar Mishra, Member (Technical)** -- Author

Heard on: 14.12.2017, 09 01.2018

ORDER

The Petitioner Company M/s Time Express (India) 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 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 06.09.1995 under the name and style of "Time Express (India) Private Limited" with the Registrar of the Companies, Karnataka and obtained Certificate of Incorporation bearing CIN No. U00737KA1995PTC018726.

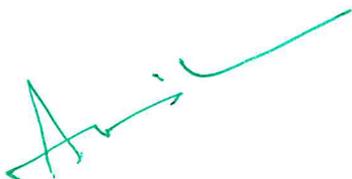
The Registered Office of the Petitioner Company is situated at No. 205, II Floor, Sadath Court, 5/6, Magrath Road, Bengaluru, Karnataka – 560 025.

The authorised share capital of the company is Rs.1,00,000/- divided into 10,000/- 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.1,00,000/- comprising of 10,000 fully paid up equity shares of Rs.10/- each.

The main objects of the Petitioner Company as set out in clause III(A) of the Memorandum of Association are (1) To carry on the business either solely or in partnership with other companies, firms, individuals as exporter in, (i) courier/travel agency/transport/cargo (ii) clearance/distribution/consolidation/marketing (iii) export/import. (2) To carry on the business of commission agency and/or distribution of products/services mentioned in (1) above. (3) To act as consultants and advisors to the service industry of services mentioned in (1) above.

The Practicing Company Secretary has submitted that the Respondent has issued a notice under section 248(1) of the Companies Act, 2013 declaring its intention to remove the name of the Company from the Register of Companies. The said notice was not received by the petitioners as the Registered Office of the company had been shifted during that period and it was not received by the Petitioner Company. He further stated that the Directors of the Company had also not received any notice sent by the Respondent.

It is further submitted that the Respondent has issued a public notice inviting objection for the 'strike off', which was also not known to the Petitioner.

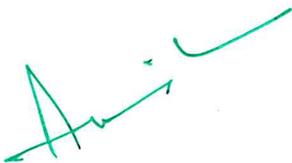


The Respondent again issued public notice declaring that the name of the Petitioner Company has been struck off from the Register and also declared that the same stands dissolved, which fact was also not known to the petitioners. Petitioner came to know about the name of the Company being struck off under section 248(5) of the Companies Act, 2013 when they were in the process of filing of certain documents.

It is submitted by the Petitioner Company that the Company has been very much in operation during the period and was carrying on the business and operation. The accounts of the Company have been duly audited and the Company has filed its income tax return for the Assessment Years 2014-15, 2015-16, 2016-17 and 2017-18. It is also submitted that the Company has filed all the TDS returns during the current financial year and the Company has also been duly filing its service tax returns during all these financial years as required and has duly filed the service tax return for the first quarter of the current financial year and GST return for the second quarter. It is their case that non-filing of the Financial Statements and the Annual Return is an isolated case of default owing to inadvertent lapse to comply with the regulation. Further the Company has plans to expand its operation. The Company is primarily engaged in the business of courier services and has a few employees and if the Company's name is not restored and revived it will be prejudicial to the interest of the contributories, employees and against the principles of natural justice.

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 8th January 2018 along with Annexures.



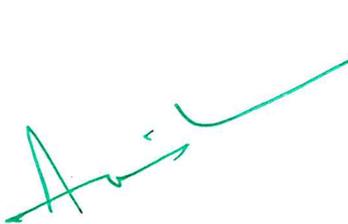
The Registrar of Companies, Karnataka, Bengaluru denied all the averments made in the petition which are specially admitted herein and submitted as follows:

- 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 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) 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-IV, V & VI respectively.**

- 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 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) That the applicant company has stated that the company has been duly carrying on the business and operation and that the accounts of the company has been duly audited during the years and that the company has filed income tax, service tax as well as TDS returns for the assessment years 2013-14, 2014-15, 2015-16 and 2016-17 and also convening the Board meeting at regular intervals and also states that the non-filing of financial statements and annual returns was a bona fide mistake on the part of the company without any mala fide intention and that the Company is ready to submit all relevant documents from the financial years 2013-14, 2014-15 and 2015-16.
- 6) That there is no prosecution, inspection, technical scrutiny and complaint 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.
- d) To dismiss prayer No.9(iv) as it is untenable and law has to take its course.

The Petitioner Company has filed the Affidavits dated **18th 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 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 17th 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

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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.”

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, the name of the Company 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 period upto 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 Time Express (India) 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

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