

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

CP No.209/BB/2017

UNDER SECTION 252 (3) OF COMPANIES ACT, 2013

IN THE MATTER OF M/S. CENTURA WATCH CASES PRIVATE. LIMITED.
AND
REGISTRAR OF COMPANIES, KARNATAKA

Order delivered on: 23rd January, 2018

Coram: Hon'ble Shri Ratakonda Murali, Member (Judicial)

Hon'ble Shri Ashok Kumar Mishra, Member (Technical)

BETWEEN :

Centura Watch Cases Private Limited,
Plot # 21, Satyamangala Industrial Area,
Tumkur – 572 104. .

... Petitioner

AND

Registrar of Companies, Karnataka,
E-Wing, 2nd Floor, Kendriya Sadan, 17th Cross,
Koramangala, Bangalore – 560 034.

... Respondent

For the Petitioner Shri Shiva Kumar B.G., Advocate.

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

ORDER

The Petitioner Company M/s **CENTURA WATCH CASES 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 was originally incorporated on 12th January, 2005 under the name and style of "CENTURA WATCH CASES PRIVATE LIMITED" in the State of

Karnataka vide CIN No.U52604KA1989PTC010206. The Registered Office of the Petitioner Company is situated at Plot No.21, Satyamangala Industrial Area, Tumkur – 572 104.

The Authorised Capital of the Petitioner Company is Rs.2,00,00, 000/- divided into 2,00,000 equity shares of Rs.100/- each. The issued, subscribed and paid-up share capital is Rs.1,99,00,000/- divided into 1,99,000 of Rs.100/- each.

The object of the Petitioner Company is to carry on the business of designing, manufacturing watch cases and selling of watches, bracelets, precision components, tools and dies, Jigs and fixture, in India and other places. The Petitioner Company has stated that it is pursuing the business in accordance with the Memorandum of Association and Articles of Association and has been active and in operation since its incorporation. **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.

The Petitioner further avers that it had duly prepared and audited the accounts and the Petitioner Company had engaged the services of a Company Secretary to perform the task of filing the returns with the office of the Registrar of Companies who did not reveal this fact to the Directors of the petitioner company. It was only in July, 2017, when the balance sheet and the Auditor's Report were ready to be filed with the ROC, the fact of non-filing of the returns

and other documents with the ROC, as well as the fact that the petitioner company's name had been struck off in the Register maintained by the ROC, was known to the petitioner company.

The petitioners have filed a memo stating that the Petitioner Company is very much carrying on its business as going concern, as the Managing Director Mr. Shashidhar Uchil, is suffering from side effects of his health problem Brain Hemorrhage, due to which, there was no turnover for the recent years in the company and the company incurred huge loss every year but the company is trying hard to get the business orders. Now, the company shareholders had decided to add a relative of the Managing Director as Director on the Board of Directors to run smoothly the functioning of the company. There are fixed assets (WDA) amounting to Rs.1,52,78,579/-, which includes land and building. The annual return pending to be filed before the ROC was only for two years, i.e., year ending 2015 and 2016. After coming to know about STK-1 notice the company was under the process of filing of its pending annual return and all of a sudden the status of the company is struck off.

The Petitioner Company had filed the Affidavit dated 23rd October, 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.

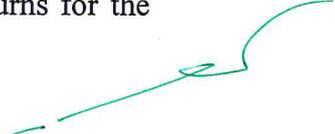
The Petitioner Company had filed another affidavit of the Director of the Petitioner Company stating that no abnormal amount has been deposited into the Company's account during demonetisation period and no Income Tax notice has been served to the appellant company on this issue.

The Registrar of Companies has filed Counter affidavit dated 05th January, 2018 along with 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. U52604KA1989PTC010206 and as per the records of the Company in MCA 21 portal. The Registered Office address is Plot No.Satyamangala Industrial Area, Tumkur, Karnataka - 572104. 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 till 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 10th March, 2017 was sent to the company. The copy of the said notice is shown as Annexure II. Further STK-1 notice dated 10/03/2017 was sent to Mr.Vikas Shashidhar Uchil and Mr.Shashidhar Uchil 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 of the name of the Petitioner Company from the Register of Companies and published a notice in STK-7 in the home page 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.
- 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.) It is stated in the petition that no notice was given to the company nor to any of its directors under Section 248 of the Act which is factually incorrect. The petitioner has also stated that the accounts of the company has prepared and audited and the company has also appointed an external consultant for performing the task of filing of returns with the office of the Registrar of Companies but the petitioner company and the directors of the company came to know that the name of the company has been struck off at the time of filing of returns for the
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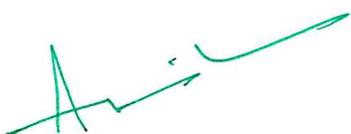
financial year 2014-2015, 2015-2016 and 2016-2017 by the petitioner company.

- viii.) There is no inquiry, investigation and complaints against this company.
- ix.) 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 Tribunal and in the event of this Tribunal willing to revive the company, then the Respondent humbly prays that this 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 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 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 2016-2017 along with this Petition to show its bona-fide 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 on 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 hence the 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 2016-2017 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. CENTURA WATCH CASES PRIVATE LIMITED in the Register of Companies within a period of 30 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)

psp.