

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

C.P.No.138/BB/2017
Under Section 252(3) of the Companies Act, 2013
Order delivered on: **24th January 2018**

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

M/s Chivaro Holdings Private Limited
No.79, 1st Main Road, 5th Cross
MSR Nagar, Mathikere Post
Bengaluru - 560 001

.. PETITIONER

Versus

The Registrar of Companies
2nd Floor, E-Wing, Kendriya Sadan,
Koramangla, Bengaluru-560 034

.. RESPONDENT

Coram: Hon'ble Shri Ratakonda Murali, Member (Judicial)
Hon'ble Shri Ashok Kumar Mishra, Member (Technical)

For the Petitioner (s): Mr. Somy Jacob, PCS

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

Heard on: 16.10.2017, 24.10.2017, 15.11.2017, 30.11.2017, 13.12.2017,
20.12.2017, 05.01.2018

ORDER

The Petitioner Company Chivaro Holdings 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 20th April 2010 under the name and style of "M/s Chivaro Holdings Private Limited" with the Registrar of the Companies, Karnataka and obtained Certificate of Incorporation vide bearing CIN No. U65993KA2010PTC053289.

The Registered Office of the Petitioner Company is situated at No. 79, 1st Main Road, 5th Cross, MSR Nagar, Mattikere Post, Bengaluru, Karnataka – 560 001.

The main objects of the Company is to act as a holding company by making investment in shares and other securities of companies which are going to be promoted or acquired by this company or by its promoters but the company will not undertake any non-banking finance activity which requires licence from the Reserve Bank of India.

The authorised share capital of the company is Rs.5,00,000/- divided into 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.1,00,000/- comprising of 10,000 fully paid up equity shares of Rs.10/- each.

Mr.Dataram Mishra and Ms.Uma Mishra are the Members of the Applicant Company, M/s Chivaro Holdings Private Limited. The said members hold 5000 equity shares each having a face value of Rs.10/- respectively. In a meeting held on 06.09.2017, the said members resolved to submit an application for restoration of the name of the Company before this Tribunal under Section 252(3) of the Companies Act, 2013 read with rule 87A of National Company Law Tribunal (Amendment) Rules, 2017.

The Practicing Company Secretary has submitted that, the Company has received a notice from the Registrar of Companies, Karnataka, Bengaluru dated 13th February 2017 stating that since the Company has not commenced any business or operation within one year of its incorporation and it



was not carrying on any business operations for a period of two immediately preceding financial years, notice STK-1 dated 13.02.2017 vide Annexure-2 was issued calling for reply within thirty days.

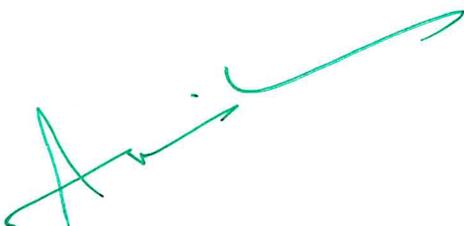
It is submitted that the Company vide its letter dated 31.03.2017 which is produced as Annexure-3 wrote to the Registrar of Companies that though the company had not commenced its operations till the end of financial year 2015-16 due to adverse market conditions, it has now managed to get some new assignments as stated in the main object of the memorandum of association and could commence business activities during the financial year 2016-17 and that the company will duly comply with all the requirements in filing the annual return, the Registrar of Companies has struck off the name of the company in the MCA website. A copy of the MCA database showing the status of the company is produced as Annexure-4.

It is further stated that the removal of the name of the Company from the Register of Companies has adversely affected 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 13th December 2017 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 18/03/2017 was sent to the company. Copy of the said notice is produced and marked as Annexure-II. Further, STK-1 notice dated 27/03/2017 was sent to Mr. Dataram Mishra and Ms. Uma Mishra, Directors of the Company. Copies of the notices sent to the Directors are produced and marked as **Annexure-III, & V** respectively.
- 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 & VIII** 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 – 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**.
- 5) That the applicant company has not filed the Balance sheet and the Annual Report for the year 2014-2015, 2015-2016 before the due date. It is submitted that the ROC has sent the STK-1 notice to the company and its Directors exactly to the same address mentioned in the MCA 21 Portal and that the Company has however filed the annual returns and balance sheets of the company for the years 2014-2015 and 2015-2016 on 15.07.2017 i.e., after the cut off date to strike off the name of the companies.
- 6) That there are no complaints received against the company and there is no investigation or enquiry pending against the company as on date.
- 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 Petitioner Company had filed the Affidavits dated 9th 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 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 2016-17 along with this Petition to show its bonafide of carrying 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 (3) three 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. The Practicing Company Secretary for the Petitioner Company further submitted the general Affidavits dated 9th November 2017 given by the shareholders of the Company justifying their appeal for restoration of the 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 since the Petitioner Company was in existence and is a holding company, the subsidiaries will suffer if the name of the Company is not restored. Therefore the name of the Company be restored in the Register of Companies as maintained by Registrar of Companies.

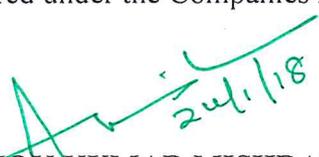
THIS TRIBUNAL DO FURTHER ORDER:

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 2016-17 in the prescribed format as required under the Companies Act, 2013 be filed with the Registrar of Companies, Karnataka, Bangalore.

Since the Petitioner Company has not yet commenced operation, the Registrar of Companies to monitor the working of the Petitioner Company on restoration of the Petitioner Company's name.

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.75,000/- 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 Chivaro Holdings 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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