

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

**C.P.No.133/BB/2017**

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

Order delivered on: **29<sup>th</sup> January 2018**

**IN THE MATTER OF  
M/S APMG INDIA CERTIFICATIONS PRIVATE LIMITED  
VS.  
REGISTRAR OF COMPANIES, KARNATAKA**

1. M/s APMG India Certifications Private Limited  
E-1 Block, Ground Floor  
Beech-Manyata Embassy Business Park  
Outer Ring Road, Nagawara  
Bengaluru, Karnataka – 560 045

2. Manoj Sethu, Member  
APM GROUP PLC  
Represented by Mr.R.Suresh

.. PETITIONERS

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): Mr. Arun Chandran K., PCS

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

Heard on: 16.10.2017, 24.10.2017, 30.11.2017, 20.12.2017, 09.01.2018

**O P D E R**

The Petitioner Company M/s APMG India Certifications 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 1<sup>st</sup> June 2010 under the name and style of "M/s APMG India Certifications Private Limited" with the Registrar of the Companies, Karnataka and obtained Certificate of Incorporation vide bearing CIN No. U74995KA2010PTC053890.

The Registered Office of the Petitioner Company is situated at No. E-1 Block, Ground Floor, BEECH-MANYATA Embassy Business Park, Outer Ring Road, Nagawara Bengaluru, Karnataka – 560 045.

The authorised share capital of the company is Rs.20,00,000/- divided into 2,00,000/- 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.

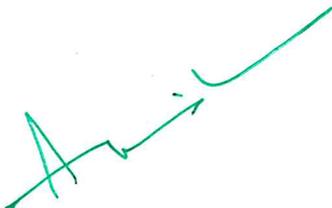
It is submitted that M/s APM Group Plc, a body corporate having its registered office at 6<sup>th</sup> Floor, Sword House, Tettersidge Road, High Wycombe, HP 13 6 DG, United Kingdom is the major shareholder in the Petitioner Company holding 9999 equity shares and Mr.Manoj Sethu is holding 1 equity share of the face value of Rs.10/- each in the Company. At present there are three directors on the Board viz., Mr. Anindya Mazumdar and Mr.Manoj Sethu, being the promoter director are holding the said office since the date of inception of the Company and Mr. Richard Charles Pharro was inducted on the Board on 20<sup>th</sup> June 2011.

The main objects of the Petitioner Company is (1) to carry on the business of conducting examinations and providing certifications and accreditations to individuals and organisations in technical, non-technical and management areas in India and abroad using management tools and software. (2) To conduct examinations and provide certifications and accreditations to individuals and organisations in technical, non-technical and management areas in India and

abroad using management tools and software from private, public sector and government vendors located in India and abroad. To provide consultancy in technical, non-technical and management areas in India and abroad using management tools and software from private, public sector and government vendors located in India and abroad. (3) To assess and accredit training organisations, affiliates and other reselling partners for technical, non-technical and management tools and software for individuals and organisations.

The Practicing Company Secretary has submitted that, the Company has received a notice from the Registrar of Companies, Karnataka, Bengaluru dated 18<sup>th</sup> March 2017 stating that since the Company has not been carrying on any business or operations for a period of two immediately preceding financial years, the Registrar of Companies intends to remove the name of the Company from the Register of Companies. The Notice STK-1 dated 13.02.2017 vide Annexure-2 was issued calling for reply within thirty days.

It is submitted that the Company has been e-filing the various Forms to the Registrar since its inception. That the Company has duly convened its Annual General Meeting for the year 2014-15 on 30.09.2015 and has adopted its financial statements at the said meeting. The Petitioner Company stated that M/s Deepak Niraj & Associates, Chartered Accountants, Bengaluru were appointed as the Statutory Auditors by the Company at the Annual General Meeting held for the F.Y. 2013-14. The appointment was subject to ratification by the members of the Company in the Annual General Meeting every year. The Company had duly filed e-Form ADT-1 for appointment of Statutory Auditors with the Registrar of Companies Karnataka. Subsequently the Statutory Auditors informed the Management of their inconvenience to continue to hold the office of Auditors from 06.07.2015. The Petitioner Company engaged new Auditors M/s Sacheen Patil, Chartered Accountants as Statutory Auditors for the F.Y. 2014-15 and since there was a miscommunication between the previous Auditor and the Petitioner Company and by oversight the Auditors failed file e-Form ADT-3 (intimating the resignation of the Auditor to the Registrar) in due time. This non filing of e-Form



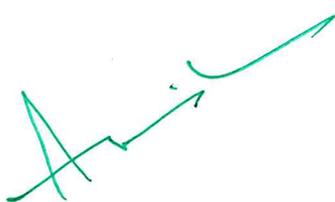
ADT-3 created a hurdle in filing the e-Form ADT-1 on appointment of new Statutory Auditor and subsequent annual filings of financial statements.

It is further stated that the non-filing of the financial statements for the F.Y. 2014-15 and 2015-16 and returns were unintentional and due to the above circumstances. Though the Petitioner Company had instructed the Auditors to complete the filing process, due to their professional engagements, they could file the pending e-Form ADT-3 only on 21<sup>st</sup> February 2017 vide SRN G36169605. A resubmission of the above e-Form was required by the Registrar and finally the e-Form ADT-3 got approved only during March 2017. Further as soon as the filing was done by the Auditors, the Petitioner Company was in the process of completing the pending filings for the F.Y. 2015 and 2016. Copy of SRN dated 21.02.2017 for the e-Form ADT-3 is produced as Annexure-1.

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 company's turnover for 2014-15 is Rs.8,27,17,009=00 and for 2015-16 is Rs.19,36,28,913=00 and its non-current assets as of 31<sup>st</sup> March 2015 is Rs.4,85,503=00 and as of 31<sup>st</sup> March 2016 is Rs.4,70,265=00. As also their current assets as of 31<sup>st</sup> March 2015 is Rs.17,40,68,279=00 and as of 31<sup>st</sup> March 2016 is Rs.11,27,85,705=00.

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 8<sup>th</sup> January 2018 along with Annexures.

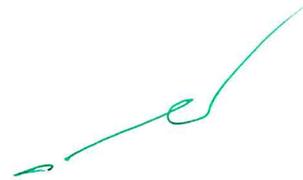
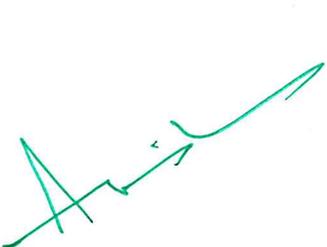


The Registrar of Companies, Karnataka, Bengaluru denied all the averments made in the petition which are specially admitted herein and submitted as follows:

- 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 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. Manoj Sethu, Anindya Mazumdar and Mr. Richar Charles Pharro, Directors of the Company. Copies of the notices sent to the Directors are produced and marked as **Annexure-III, IV & 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–VI, VII VIII & IX 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 – X.** 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-XI.**
- 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 at page Nos.31 to 115 to substantiate that it is a functioning company.
- 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) To dismiss the second portion of prayer No.8(b) praying for not initiating any penal action against the company and Directors, as the same is untenable and the law has to take its own course.
- c) 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.
- d) 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 7<sup>th</sup> **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 Respcndent/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 bonafide of carrying on the Business.

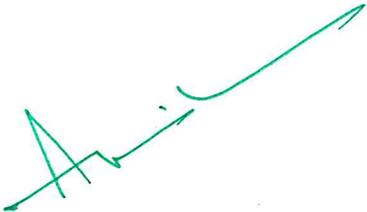
Section 252(3) stipulates that “if a company, or any member or creditor or workman thereof feels aggrieved by the company having its name struck off from the Register of Companies, the Tribunal on an application made by the company, member, creditor or workman before the expiry of twenty years from the 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 (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.

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 period upto 2016-17



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 APMG India Certifications 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