

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

C.P.NO. 168/BB/2017

Under Section 252(3) of Companies Act, 2013

Order delivered on 30th January, 2018

IN THE MATTER OF
M/S MOBIWALKERS DIGITAL MEDIA PRIVATE LIMITED

Vs

REGISTRAR OF COMPANIES, KARNATAKA

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

For the Petitioner (s): Mr. C.Janardhana Reddy, PCS

For the Respondent (s):

Per: Hon'ble Shri.RatakondaMurali, Member Judicial

MOBIWALKERS DIGITAL MEDIA PRIVATE LIMITED
No.116/2, Ground Floor, Doddathogur Village
Begur Hobli, Bengaluru South Taluk
Bengaluru KA 560 100 IN

.. Petitioner

Vs

REGISTRAR OF COMPANIES, KARNATAKA
'E' Wing, 2nd Floor, KendriyaSadana,
Kormangala, Bangalore-560034.

.. Respondent

ORDER

The Petitioner Company M/s Mobiwalkers Digital Media 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 2012 under the name and style of "Mobiwalkers Digital Media Private Limited" in the State of Karnataka vide **CIN No.U72200KA2012PTC067018**. The Registered Office of the Petitioner Company is situated at No.116/2, Ground Floor, Doddathogur Village, Begur Hobli, Bengaluru South Taluk, Bengaluru – 560 100, Karnataka.

The Authorised Capital of the Petitioner 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 is Rs.5,00,000/- divided into 50,000 equity shares of Rs.10/- each.

The object of the Petitioner Company is to carry on the business of carry on the business of internet resale, video on demand, IPTV, clouding hosting services, website development, internet marketing, indoor publicity, video content products, to develop computer software, render computer consultancy services and develop and market other related products connected with information technology industry and also provide services related to information technology, bio-informatics and assist in development of intellectual property rights.

The Petitioner Company states that its name has been struck off by the Registrar of companies, Karnataka on 28th of April, 2017. The Petitioner Company further states that the Registrar of Companies through STK-5 dated 28.04.2017 on its website has disclosed that it has reasonable cause to believe that these companies have not been carrying on any business or operation for a period of two immediately preceding financial years and have not made any application within such period for obtaining the status of dormant company under

Section 455 and that it will strike off the names of the said companies within 30 days from the date of the said display unless objections were filed within the time prescribed. The applicant was one of the companies notified by the Registrar of Companies. A copy of the notice is produced as Annexure-A. When the company's representative inquired about the said notice at the office of the Registrar of Companies, he was informed that the said action was taken as the company has not filed audited financial statements and annual returns continuously for the four immediately preceding financial years.

The Petitioner Company further submits that the Company is doing its business as a going concern and due to some managerial issue it was not able to upload the Balance Sheet and Annual Returns for the preceding four financial years. The certified true copy of the audited Balance Sheet for the preceding four financial years showing that the Company is doing its business on going concern basis is annexed and Marked as Annexure-B.

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 had filed the Affidavit dated 15th December, 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 has filed an Affidavit dated 15th December, 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 16th January 2018 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 04.12.2012 in the State of Karnataka vide **CIN No.U72200KA20120TC067018**. The Registered Office of the Petitioner Company is situated at No.116/2, Ground Floor, Doddathogur Village, Begur Hobli, Bengaluru South Taluk, Bengaluru – 560 100, Karnataka. 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 2012-2013 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 31.03.2017 was sent to Mr.Vijaya Bhaskar Reddy Mandala and Ms. Phani Priya Inampudi, the Directors of the company. The copy of the said notice is shown as **Annexures III & IV 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.

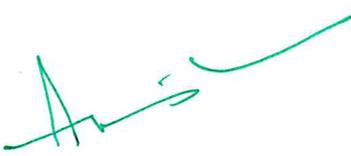
- iv.) It is submitted that a consolidated notice in STK-5 in English and Hindi was released as per Rule 7 of the Companies (Removal of name of Companies from the Register of Companies) Rule, 2016, in the Official website of the Ministry of Corporate Affairs on 28.04.2017 and in the official Gazette 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 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 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-X.**
- vi.) The company has stated that the company is doing its business on a going concern basis and due to some managerial issues the company was not able to upload the Balance Sheet and Annual Return for preceding financial years from 2012-2013 till 2015-2016. The copies

of the audited Balance Sheet have been attached to the petition. It may be seen 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.

- vii.) The petitioner company states that there is no prosecution, inspection, technical scrutiny and complaint pending against this company.
- viii.) 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 up to 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 2011, as mandatorily required under the Act.



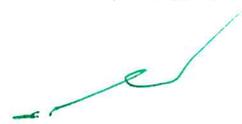
The Petitioner Company has committed a default in not filing the Statutory Returns for the Financial Years 2012-2013 till 2015-2016 before the Respondent i.e. Registrar of Companies. The Petitioner in order to show that the company was carrying out business on the date of receipt of notice in Form STK-1 as well as on the date of struck off provided Audited Balance Sheet for the Period between 2015 -2016 & 2016-2017 along with this Petition to show its bonafide of carrying the Business along with a memo.

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 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 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 2012-2013 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.1,00,000/- 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. MOBIWALKERS DIGITAL MEDIA PRIVATE LIMITED in the Registrar 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