

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

C.P.NO.186/BB/2017
Under Section 252(3) of Companies Act, 2013
Order delivered on 30th January, 2018

IN THE MATTER OF

M/s. YESTEAM SECURITY AND MANPOWER SERVICE PRIVATE LIMITED

M/s. Yesteam Security and Manpower Service Private Limited
No.6 and 7, 1st Floor, MK Street
Shivajinagar
Bengaluru 560 051

... Petitioner

Vs.

Registrar of Companies, Karnataka
'E' Wing, 2nd Floor, Kendriya Sadan, Kormangala
Bengaluru 560 034

... Respondent

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

For the Petitioner (s): Ms. Shashikala Hemanth
"Sri Lakshmana Krupa"
No.162, 6th Cross, II Main
MEI Layout, Nagasandra Post
Bangalore 560 073
Practicing Company Secretary for the Petitioner

Per: Hon'ble Shri.Ashok Kumar Mishra, Member Technical - Author

Heard on : 15.11.2017, 28.11.2017, 15.01.2018, 17.01.2018 and 30.01.2018

ORDER

The Petitioner Company M/s. Yesteam Security and Manpower Service 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 Company Petition are briefly described hereunder:

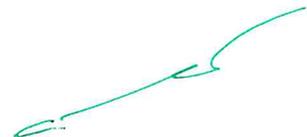
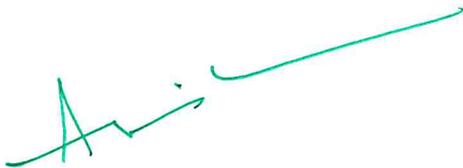
1. The Petitioner Company **M/s. Yesteam Security and Manpower Service Private Limited** was incorporated with the Office of the Registrar of Companies, Karnataka on 24th January, 2012 bearing CIN: U74920KA2012PTC062233, under the provisions of the Companies Act, 1956 as a Private Limited Company;
2. The Paid-up Capital of the Petitioner Company is Rs.1,00,000/- divided into 1,000 equity shares of Rs.100/- each.
3. That the Petitioner Company received a notice from the Registrar of Companies (ROC), Karnataka in Form No. STK-1 dated 31.03.2017, stating that the ROC has reasonable cause to believe that the Company has 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. A copy of the notice is enclosed and marked as **Annexure-A**.
4. That the Petitioner Company respectfully submit that the Company was in the process of filing of its Balance Sheet and Annual return with ROC after receipt of STK-1 dated 31.03.2017. In the meantime, it received another notice from ROC, Karnataka, in Form No. STK-5 dated 28.04.2017, stating that pursuant to the notice dated 31.03.2017, the name of the Companies has been struck off from the Register of Companies and the Company has been dissolved.
5. That the Petitioner Company respectfully submitted that due to non-filing of Balance Sheet and Annual returns, that the ROC had reasonable cause

to believe that the Company has not been carrying on any business or operation for a period of two immediately preceding financial year, and however that the Company was carrying on its business on going concern basis and the filings was not done due to managerial issue and also the Directors of the Petitioner Company were not aware of the provisions of the Companies Act, 1956 and was not able to upload the Balance Sheet and Annual Returns for the preceding 5 (Five) financial years. Certified true copies of audited Balance Sheet for the preceding 5 (Five) financial years, Bank statement, IT Return Acknowledgement of Assessment year 2015-16 and 2016-17 and Work Orders showing that Company is doing it business on going concern basis is enclosed and marked as **Annexure-B**.

Brief objects of the Petitioner Company is to carry on the business of providing Security Personnel, Manpower, House Keeping and all kinds of personnel namely Administrative, executive, technical or any other field at all positions, in Industrial, Commercial, Non-commercial Establishments in all sector, etc. **A copy of Memorandum of Association and Articles of Association is enclosed and marked as Annexure-C.**

The Company has also produced the Auditors Report along with the Audited Accounts for the Financial Year ended 31.03.2012, 31.03.2013, 31.03.2014, 31.03.2015 and 31.03.2016 and also the Income Tax Return for the Assessment Year 2013-14, 2014-15, 2015-16, 2016-17 and 2017-18.

The Directors/Members of the Petitioner Company has also confirmed that no abnormal amount has been deposited into the Company's Account during demonetization period i.e. September 2016 to January and that no income tax notice has been served on the Company in this connection, as per affidavit duly notarized dated 04.12.2017.



The Directors/Members of the Petitioner Company has also filed an affidavit duly notarized dated 04.12.2017undertaking to file all the overdue Balance Sheet, and Annual Returns with Ministry of Corporate Affairs immediately within 30 days upon restoration of the name of the Company by the Hon'ble National Company Law Tribunal, Bengaluru Bench.

The Registrar of Companies has filed counter affidavit dated 12th January, 2018 along with annexures. The ROC 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:

1. The Petitioner Company is registered with Registrar of Companies on 24.01.2012 with CIN: U7492012PTC062233 and as per the records of the Company in MCA 21 Portal, the Registered Office at No. 6 and 7, 1st Floor, M.K. Street, Shivajinagar, Bangalore 560 051. Copy of the Company Master Data is produced and marked as **Annexure-I**.
2. It is submitted that on verification of the of 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 Company has not filed either the Balance Sheet or the Annual Returns from the year 2012-13 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 17.03.2017 was sent to the Company. Copy of the said notice is produced and marked as **Annexure-II**. Further, STK-1 notice dated 31.03.2017 was sent to Mr. Karekal Palya Rangappa Gopal Krishna and Mr. Ravikumar, Directors of the Company. Copies of the notices sent to the Directors are produced and marked as **Annexure-III and IV** respectively;
3. In the said notice STK-1 that was sent to the Company and to the Directors of the Company, it was mentioned that the Petitioner Company is not carrying on any business or operation for a period of 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 Act unless a cause is shown to the contrary within 30 days from the date of receipt of the STK-1 notices;

4. 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 Vijaya Karnataka (Kannada Edition) and in English in the Times of India on 13.05.2017, 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 Vijaya Karnataka and the Times of India are produced and marked as **Annexure-V, VI, VII and VIII** respectively.
5. 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 way of its Directors and also since no Balance Sheet or Annual Returns was filed by the Company till 20.06.2017 the day on which the list of defaulting Companies were crystallized, the Respondent proceeded to strike off the name of the 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 produced and marked 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 the Register of Companies as per Section 248(5) of the Act. A copy of the publication made in the official Gazette on 29.07.2017 is produced and marked as **Annexure-X**.
6. It is stated in the petition, that the applicant Company is doing its business on a going concern and due to some managerial issue and Directors of the

Company were not aware of the provisions of the Companies Act, 1956, was not able to file the Financial Statement of the year 2012-13 to till 2015-16. 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.

7. There is no prosecution, inspection, technical scrutiny and complaint pending against this Company.
8. The Petitioner has prayed that the name of the 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 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 the 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 demand draft favouring the Pay & Accounts Officer, Ministry of Corporate Affairs, Southern Region, Chennai, towards the expenses incurred by the Respondent under Section 248 action, like postage stationery, 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 Petition.

After hearing the Counsel for the Petitioner Company and perusal of material on record, the report of 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 since the Petitioner Company is a going

concern, the name of the Company to be restored in the Register of Companies as maintained by Registrar of Companies.

HENCE 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 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. 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. YESTEAM SECURITY AND MANPOWER SERVICE PRIVATE LIMITED** in the Registrar of Companies within a period of 15 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