

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

**C.P.No.181/BB/2017**

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

Order delivered on: **30<sup>TH</sup> January 2018**

**IN THE MATTER OF  
OWN WATER INDIA PRIVATE LIMITED**

**Own Water India Private Limited**  
**Site No.1 & 2, Khata No.50, Chikkabegur Gate,**  
**Hosur Road,**  
**Bangalore-560068. -**

**PETITIONER**

**Versus**

**Registrar of Companies**  
**2<sup>nd</sup> 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. C.Janardhana Reddy, H.No. 6-3-347/9/N, Flat No.8, First Floor, NV Plaza, Punjagutta, Dwarakapuri Colony, Hyderabad, Practicing Company Secretary and Authorised Representative for the Petitioner Company.

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

Heard on: 13/11/2017, 28/11/2017, 22/12/2017, 17/01/2018

**O R D E R**

The Petitioner Company **Own Water India 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 deems fit in the circumstances of the case.

The averments made in the Company Petition are briefly described hereunder:-

The Petitioner Company was incorporated on 4<sup>th</sup> April 2013 under the name and style of "**Own Water India Private Limited**" with the Registrar of the Companies, Karnataka and obtained Certificate of Incorporation vide bearing CIN No. **U29253KA2013PTC068431**. The Registered Office of the Petitioner Company is situated at Site No.1 & 2, Khata No.50, Chikkabegur Gate, Hosur Road, Bangalore-560068.




The main objects of the Company is to carry on anywhere in India or abroad, either directly or in collaboration, partnership, joint venture the business as manufacturers, producers, processors, formulators, sellers, importers, exporters, merchants, distributors, traders and dealers in RO water purifiers, water softeners and various kinds of water treatment equipments, components and systems; to carry on anywhere in India or abroad, either India or abroad, either directly or in collaboration, partnership, joint venture the business of project implementation with respect to water treatment and hydro energy plant; to carry on anywhere in India or abroad, either directly or in collaboration, partnership, joint venture the business of providing consultancy and designing services in the field water equipments, components and systems etc., Details of the objects of the Company are mentioned in the Memorandum and Articles of Association of the Petitioner Company.

The Authorised share capital of the Company is Rs 10,00,000/- divided into 1,00,000 equity shares of Rs 10/- each and the Paid-up Share Capital is Rs 1,00,000/- divided into 10,000 Equity Shares of Rs 10/- each fully paid up.

It is averred in the Company Petition that, the Company has received a notice from the Registrar of Companies, Karnataka, Bengaluru on 28<sup>th</sup> April 2017 vide Notice No. STK-7/ROC(B)/2017/1 due to non-filing of statutory compliances viz., Financial Statements and Annual Returns for the period 2013-14, 2014-15 and 2015-16.

It is averred in the Company Petition that, the Petitioner Company is doing its business on a going concern basis and due to some managerial issue was not able to upload the Balance sheet and Annual Returns for preceding 4 (Four) financial years. It is further averred in the Company Petition that, the Petitioner Company was in the process of filings of its Balance sheet and Annual Return with the Registrar of Companies, Karnataka, Bengaluru. The Company has received another notice from the Registrar of Companies, Karnataka, Bengaluru in Form No.STK-7 dated 17<sup>th</sup> July 2017, stating that pursuant to the notice dated 28<sup>th</sup> April 2017, the name of the Company has been struck off from the register of

Companies and the company has been dissolved. Consequent to the same, Respondent has published the name of the Company in the Official Gazette on 17<sup>th</sup> July 2017, vide Notice No. STK-7/ROC(B)/2017/1(item No.10467). Copy of the Notification dated 17<sup>th</sup> July 2017 issued by the Registrar of Companies, Karnataka, Bengaluru under Section 248(5) of the Companies Act, 2013 and copy of Master Data is shown as **Annexure-IX**.

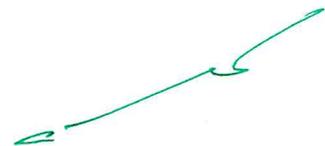
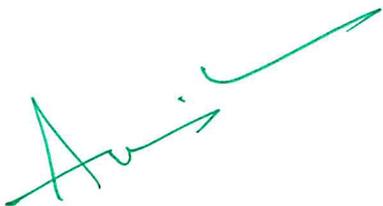
It is further averred that the, due to non filing of Balance Sheet and Annual return, the Registrar of Companies, Karnataka, Bengaluru had a reasonable cause to believe that the Company has not been carrying on any business or operation for a period of two immediately preceding financial years. However the company was carrying on its business on going concern basis and the filings was not done due to managerial issues.

It is also averred that, the Petitioner Company has duly filed Income tax returns for assessment year 2015-16 and 2016-17 and has turnover of Rs 2,76,591/- during the year 2015-16. It is also averred that, the Petitioner Company is having some employees and due to strike off, the employees of the company will be directly affected and respectfully prayed the Tribunal to pass the order for restoration of the name of the company with the Registrar of Companies and also at the MCA site.

It is also averred that, upon restoration of the name of the company in register of companies, the Petitioner Company will comply and file all its pending balance sheets and annual returns with the Registrar of Companies, Karnataka, Bengaluru which is enclosed and shown at **pages 10 to109**.

The Practising Company Secretary for the Petitioner has stated that, the Company has filed this petition within the limits laid down under section 252(3) of the Companies Act, 2013.

The Registrar of Companies, Karnataka, Bengaluru has filed Counter Affidavit dated 16<sup>th</sup> January 2018 along with annexure.



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

- 1) 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 2013-14 to till 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 16/03/2017 was sent to the company. Copy of the said notice is produced and marked as **Annexure-II**. Further, STK-1 notice dated 22/03/2017 was sent to Mrs. Suman Shenava Vivek, Managing Director of the Company to the address available in the MCA 21 portal. Copies of the notices sent to the Directors are produced and marked as **Annexure-III**.
- 2) 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) 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 **Annexure- IV, V, VI & VII** respectively.
- 4) 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 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 –VIII**. 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-IX**.

- 5) It is stated in the petition that, the Company is doing its business on a going concern basis and due to some managerial issue the Petitioner Company was not able to file the Financial Statement for the year 2013-14, 2014-15 and 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. The Petitioner has claimed in the petition that, it is a functioning company, and has enclosed the copies of the Balance Sheet of the year 2013-14, 2014-15 and 2015-16 in page No. 10 to 109 of the Company petition herein.
- 6) Though 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 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 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 compliances 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, Karnataka, Bengaluru has stated that, he 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 the Petitioner Company has committed default in not filing the Statutory Returns for the Financial Years 2013-14 to till 2015-16 before the Respondent i.e. Registrar of Companies. The Directors are willing to continue the company since it is engaged in the business of manufacturing of water purifiers, business of the company is ongoing basis and also stated that the company was carrying on business at the time of strike off. The Petitioner Company prayed that the name of the Company be restored in the Register of Companies under section 252 of the Act. The copies of the Audited Balance Sheet for the financial years 2013-14 to till 2015-16 are shown at **Page No.10 to 109**)

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 Practising Company Secretary for the Petitioner Company, who contended that, the Petitioner Company is doing its business on a going concern basis and due to some managerial issue the company had not filed the Financial Statements and Annual Returns for the year ended 31<sup>st</sup> March 2014, 31<sup>st</sup> March 2015 and 31<sup>st</sup> March 2016. He further contended that, the Applicant Company will submit necessary filing of Financial Statements and Annual Returns soon after restoration of the name of the company with the Registrar of Companies, Karnataka- Bengaluru and prayed the Tribunal to revive this Company.

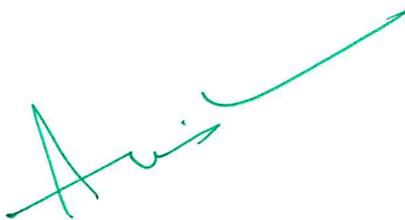


The Practising Company Secretary for the Petitioner Company has filed Memo dated 8<sup>th</sup> December 2017 alongwith Affidavit of the Director of the Company giving justification for restoration of the Company in the Register of Companies as maintained by Registrar of Companies, Karnataka, Bengaluru. It is stated in the Affidavit that, no abnormal amount has been deposited into the Company's bank account and the amounts deposited are in the normal course of business during demonetization period i.e., September 2016 to January 2017 and no Income Tax notice has been served on the Company in this connection. It is also stated in the Affidavit that, after receiving the order of Revival of the company from this Hon'ble Tribunal, it will undertake to file all the pending Balance Sheets and Annual Returns with the Registrar of Companies, Karnataka, Bengaluru within 30 (thirty) days from the date of receiving the order.

After hearing the Practising Company Secretary for the Petitioner Company, and after perusal of the materials 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 name of the Company to be restored in the Register of Companies as maintained by Registrar of Companies. The name of the Company be ordered to be restored and

**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 2013-14, 2014-15, 2015-16 and for subsequent year 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 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, Bengaluru is further directed to restore the name of the Petitioner Company i.e. **Own Water India Private Limited** in the Register of Companies within a period of 30 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