

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

C.P.No.158/BB/2017
Under Section 252(3) of the Companies Act, 2013
Order delivered on: **30th January 2018**

**IN THE MATTER OF
M/S R.N.BAGWAN SUGARS PRIVATE LIMITED
VS.
REGISTRAR OF COMPANIES, KARNATAKA**

R.N.Bagwan Sugars Private Limited
Represented by Shareholders
R.N.Bagwan & Others
Regd. Office: Bagwan Building
Unkal Cross, Vidya Nagar
Hubli Dharwad -- 580 031

.. PETITIONER

Versus

The Registrar of Companies
2nd 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. Sudheendra P.Ghali, PCS

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

Heard on:

O R D E R

The Petitioner Company M/s R.N.Bagwan Sugars 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 15th October 2009 under the name and style of "M/s R.N. Bagwan Sugars Private Limited" with the Registrar of the Companies, Karnataka and obtained Certificate of Incorporation bearing CIN No. U15421KA2009PTC051211.

The Registered Office of the Petitioner Company is situated at Bagwan Building, Unkal Cross, Vidya Nagar, Hubli Dharwad – 580 032, Karnataka.

The Authorised Share Capital of the Company is Rs.10,00,000/- divided into 1,00,000/- 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.5,00,000/- comprising of 50,000 fully paid up equity shares of Rs.10/- each.

The main object of the Petitioner Company is to carry on the business of manufacturers, refiners, producers, importers and exporters of and dealers in all kinds and classes of sugar, cane sugar, beet sugar, starch sugar, gur, khandasari sugar and jiggery, all kinds of sugar products, sugar candy, glucose, confectionery and canned fruits, sugar cane, bagasse, molasses, yeast and other fermentations, syrups and alcohol, all alcoholic substance, acetone, spirits, starch and all products or by-products thereof and food products generally and all kinds of articles or products in the manufacture of which any from sugar is used and also to deal in or manufacture, refine, produce, import or export and other articles or things of a character similar or analogous to the foregoing or any of them or connected therewith.

The Practicing Company Secretary has submitted that, the Company has received a default notice in the Form No.STK-1 dated 28.03.2017 for not carrying on business for a period of two immediately preceding financial years and for not making any application within such period for obtaining the status of a dormant company under Section 455 of the Companies Act, 2013. He further submits that the Company submitted reply dated 01.04.2017, a copy of the

said letter is annexed to this petition as Annexure-A1. However, in spite of filing of the reply the name of the Company has been struck off by the Registrar of Companies, Karnataka in the month of June 2017.

It is submitted by the Petitioner Company that the non-filing of the financial statements for the F.Y. 2010-11 to 2015-16 and Annual Returns were unintentional and due to circumstances beyond their control. 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. He further submits that the Company has taken necessary steps with various Government departments for obtaining necessary approval for starting operations.

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.

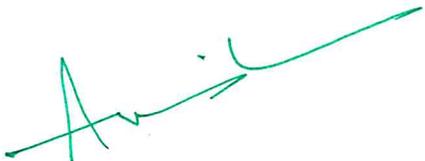
The Registrar of Companies, Karnataka, Bengaluru has filed Counter Affidavit dated **1st January 2018** along with Annexures.

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 years 2010-11 to 2015-16. Therefore, the Respondent had reasonable cause to believe that the petitioner company is not carrying on

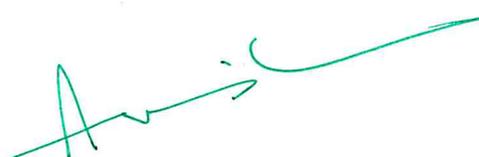
any business or operation and therefore a notice in Form STK-1 dated 17/03/2017 was sent to the company. Copy of the said notice is produced and marked as Annexure-II. Further, STK-1 notice dated 31/03/2017 was sent to Sri Rahees Ahmed Nasiruddin Bagwan, Sri Nasiruddin Papulsab Bagwan and Smt. Fatima Bagwan, Directors 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 **Annexures-III & IV** 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 though the applicant company claims that it has objected to the STK-1 notice of Registrar of Companies, no proof of such objection has been enclosed with the petition. The company has not filed the Balance Sheet and the Annual Report for the years 2010-11 to 2015-16. It may be seen that the Registrar of Companies 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 company has claimed in the petition that it is a functioning company and has enclosed the copies of the Balance Sheet for the years 2014-15 and 2015-16 as annexures to company petition.
- 6) That there is no prosecution, inspection, technical scrutiny and complaint pending against the company.
- 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.

From the averments in the petition it is learnt that the Company has not yet commenced commercial operations, but since it is a sugar manufacturing unit, which according to the learned counsel for the petitioner involves long gestation period and further submits that the Company is active since incorporation and undertaken to obtain the Distance Certificate No.DSK/DEV/48/2009-10 dated 22.06.2010 from the Commissioner for Cane Development and Director of Sugar. It has also obtained IEM bearing 2152/SIA/IMO/2010 dated 25.06.2010 issued by Government of India to set up a Sugar Factory at Golli Halli, Khanapur, Belgaum, Karnataka. The Company has also applied for infrastructural assistance/approval under State Level Single Window Clearance Committee for project approval, acquisition of land, supply of water and power, pollution control board clearance, incentives and concessions and statutory clearances. It is further submitted that the Company has purchased 33 acres of land and has obtained permission under Section 109 of the Karnataka Land Reforms Act and permission has also been obtained from the concerned village panchayat. Steps have also been taken for installation of plant and machinery and other civil works. Major investments have been made and steps have been taken to set up a sugar factory. It is also submitted that bank loans to the extent of Rs.90 crores have been applied for and the total project cost works out to Rs. 150 crores. A detailed Project Report regarding Financial & Technical viability has been obtained from MITCON.

The learned counsel for the petitioner submits that the Company has been undergoing a bad patch financially and therefore it has been unable to make the statutory filings and due to various litigations before the Hon'ble High Court.

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 2010-11 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 2010-11 to 2015-16 along with this Petition to show its bona fide 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 five(5) 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.

It appears from the balance sheet filed as on 31.03.2016, the company has tangible/fixed assets of Rs.1,92,11,153/-, short term loan and advances of Rs.63,37,848/- and other current assets of Rs.1,27,35,034/-. Considering all these aspects and 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 from 2010-1 up to 2015-16 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.1,25,000/- 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 R.N.Bagwan Sugars 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