

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

C.P.NO. 197/BB/2017

Under Section 252(3) of Companies Act, 2013

Order delivered on 30th January, 2018

IN THE MATTER OF
M/S SRI UNNATHI SHELTER 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): M/s Uday Shankar Associates, Advocates

For the Respondent (s):

Per: Hon'ble Shri.RatakondaMurali, Member (Judicial)

SRI UNNATHI SHELTER PRIVATE LIMITED

Having its Registered Office at:

#16 Remco Layout

Service Road, Vijay Nagar

Bengaluru 560 040

.. Petitioner

Vs

REGISTRAR OF COMPANIES, KARNATAKA

'E' Wing, 2nd Floor, KendriyaSadana,

Kormangala, Bangalore-560034.

.. Respondent

Heard on: 16.11.2017, 30.11.2017, 19.12.2017, 16.01.2018, 22.01.2018

ORDER

The Petitioner Company M/s Sri Unnathi Shelter 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 17th April 2007 under the name and style of "Sri Unnathi Shelter Private Limited" in the State of Karnataka vide **CIN No.U45201KA2007PTC042512**. The Registered Office of the Petitioner Company is situated at No.16, Remco Layout Service Road, Vijay Nagar, Bengaluru – 560 040, 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.1,00,000/- divided into 10,000 equity shares of Rs.10/- each.

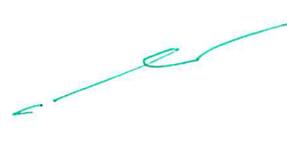
The objects of the Petitioner Company are:

1. To purchase, acquire, take on lease or in exchange or in any other lawful manner any area, land, buildings, structures and to turn the same into account, develop any area, land, buildings, structures and dispose of or maintain the same and to build townships, markets, or other buildings, residential and commercial or conveniences thereon and to equip the same or part thereof with all or any amenities or conveniences, drainage facility, electric, telephonic, television installations and to deal with the same in any manner whatsoever, and by advancing money to and entering into contracts and arrangements of all kinds with builders, tenants and others.
2. To construct, erect, build, repair, re-model, demolish, develop, improve, grades, curve, pave, macadamise, cement and maintain buildings structures, houses apartments, hospitals, schools, places of worship, highways, roads, paths, streets, sideways, courts, alleys, pavements and to do other similar construction, levelling or paving work and for these purposes to purchase, take on lease, or otherwise acquire and hold any lands and prepare layout thereon or buildings of any tenure

or description wherever situate, or rights or interests therein or connected therewith.

3. To carry on the business of builders, contractors, dealers in and manufacturers of prefabricated and precast houses, buildings and erections and materials, tools, implements, machinery and metalware in connection therewith or incidental thereto and to carry on any other business that is customarily, usually and conveniently carried on therewith.
4. To hold, purchase, sell, construct or otherwise deal/acquire lands, flats, suits, multi-storied complexes, houses, bungalows, orchards, shopping arcades, parking places quarter apartments, buildings, sheds and other fixtures and conveniences, industrial/commercial and residential and to let them out on hire-purchase, rent contract or any other agreement as may be deemed fit or to buy and sell lands, houses, apartments, to any person on terms and conditions as may deemed fit or to hold, maintain, sell, allot houses, apartments, sheds or buildings thereof to the shareholders or any other person.
5. To carry out, undertake, or supervise any building, altering, improving, demolishing and repairing operations and all other works and operations in connection with immovable estate and properties.

The Petitioner Company states that its name has been struck off by the Registrar of companies, Karnataka on 17th July 2017. The Petitioner Company further states that the Registrar of Companies through STK-5 dated 17.07.2017 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-D. 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

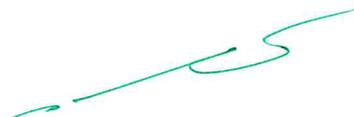
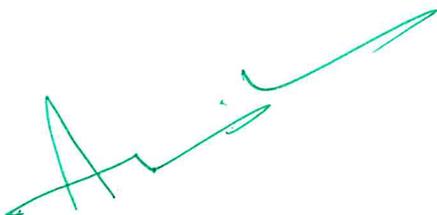


was taken as the company has not filed audited financial statements and annual returns continuously for the four immediately preceding financial years.

The Petitioner Company further submits that the Company is doing its business as a going concern and that the bank account of the Petitioner Company has also been frozen due to the notification of the Registrar of Companies. The Petitioner Company further submits that it has three employees on its rolls and is actively in the business of real estate. It is averred that the Company has conducted sales amounting to Rs.42,73,638/- (Rupees Forty Two Lakh Seventy Three Thousand Six Hundred and Thirty Eight only) between the period of 01.04.2016 to 31.03.2017 and the investment in inventories amounts to Rs.5,92,85,332.60 (Rupees Five Crore Ninety Two Lakh Eighty Five Thousand Three Hundred and Thirty Two only). That the Petitioner Company was not able to upload the Balance Sheet and Annual Returns for the preceding five financial years inadvertently. The Petitioner Company has produced its Income Tax Returns along with the financial statements of the financial years ending between 31.03.2010 and 31.03.2016 as Annexure-E series.

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 Company 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 this Tribunal in this regard.

The Petitioner Company has filed the Affidavit dated 26th October, 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 26th October, 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 18th 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 17.04.2007 in the State of Karnataka vide **CIN No.U45201KA2007PTC042512**. The Registered Office of the Petitioner Company is situated at No.16, RPC REMCO Layout, Service Road, Vijayanagar, Bengaluru – 560 040. 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 2011-2012 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 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 31.03.2017 was sent to Ms. Sukanya Kalegowda and Mr.Mohanraj Pratheik, Directors of the company to the address available in the

MCA 21 portal. Copies of the said notices are 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 was not carrying on business or operation for a period of three 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 of 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 employee tasked with the job of filing returns resigned and that the management was not aware that the company has not filed the Balance Sheet and Annual Return for financial years 31.03.2011 to 31.03.2016. The petitioner has however enclosed the copies of the Balance Sheet to the Company petition herein and has claimed that it is a functioning company.
- 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.

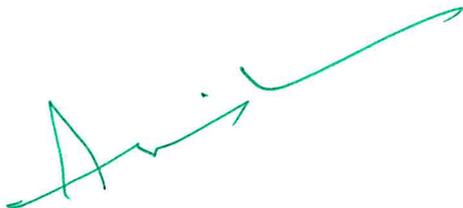


On perusal of the affidavit of the Registrar of Companies, it appears that the name of the company was struck off, for failure on the part of the company to file the statutory documents since 2011-12, as mandatorily required under the Act.

The Petitioner Company has committed a default in not filing the Statutory Returns for the Financial Years 2011-2012 till 2015-2016 before the Respondent i.e. Registrar of Companies. The Petitioner Company in order to show that the company was carrying on 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 2011-2012 to 2015-2016 along with this Petition to show its bona fide 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 subsection (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.



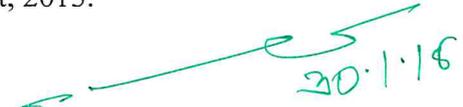
THIS TRIBUNAL DO FURTHER ORDER

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 2011-2012 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.1,25,000/- as cost to the account of Central Government in favour of the Pay & Accounts Officer, Ministry of Corporate Affairs, Southern 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. SRI UNNATHI SHELTERS 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