

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

C.P.NO.194/2017

Under Section 252(3) of Companies Act, 2013

Order delivered on 29.01.2018

IN THE MATTER OF

M/s. CHEERS MANUFACTURING PRIVATE LIMITED

M/s. Cheers Manufacturing Private Limited
13, Old Madras Road
Bhattarahalli, KR Puram
Bengaluru 560 049

... 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. Devika Sathyanarayana
V Sreedharan & Associates
GNR Complex, 1st & 2nd Floor
32/33, 8th Cross, Wilson Garden
Bangalore 560 027
Practicing Company Secretary for the Petitioner

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

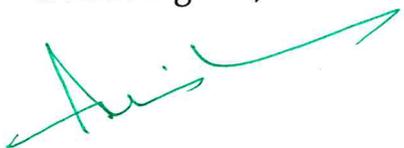
Heard on : 16.11.2017, 30.11.2017, 06.12.2017, 19.12.2017, 15.01.2018 and 18.01.2018

ORDER

The Petitioner Company M/s. Cheers Manufacturing 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 and to pass such order as deemed fit under the circumstances of the case.

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

1. The Petitioner Company **M/s. Cheers Manufacturing Private Limited** was incorporated with the Office of the Registrar of Companies, Karnataka on 27th August, 2013 bearing CIN: U74900KA2013PTC070704, under the provisions of the Companies Act, 1956 as a Private Limited Company, having its Registered Office address is No.974, Shreeyogambika, No. 13, Old Madras Road, Bhattarahalli, KR Puram, Bengaluru 560 045.
2. The Authorised and Paid-up Capital of the Petitioner Company is Rs.1,00,000/- divided into 1,000 equity shares of Rs.100/- each.
3. Brief objects of the Petitioner Company is to carry on the business in India or elsewhere of manufacturing, trading, export, import or otherwise deal in all hospital consumables like cotton wool, bandage cloth, bandage rolls, bedding sets, covers, gloves, polypropylene isolation gown, lab coats, nursing coats, casting tape, shoe covers, face mask, hot water bag, ice bag, any other packing bags, baby blankets, tissue layers, injection syringe and other related goods.
4. It is averred in the Company petition that the name of the Petitioner Company has been struck off by the Registrar of Companies (ROC), Karnataka on 17th July, 2017 vide Notice No. STK-7/ROC(B)/2017/1 dated 17th July, 2017. The Directors are willing to continue the Company since it is advantageous and favourable to them to have the same Company name for extending the business activities. It may be noted that the Company was carrying on business at the time of strike off and that the Petitioner Company would like to submit that the Petitioner Company is genuine operational Company dealing in hospital consumables like cotton wool, bandage cloth, bandage rolls, bedding sets, covers, gloves, polypropylene, isolation gown, lab coats, nursing coats, casting tape, shoe covers, face

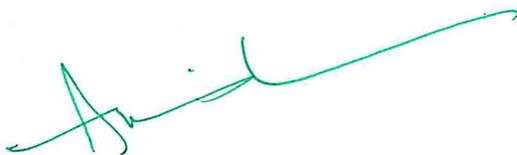


mask, hot water bag, ice bag, any other packing bags, baby blankets, tissue layers, injection syringe and other related goods. A copy of **Memorandum of Association and Articles of Association is enclosed and marked as Annexure-A.**

5. That the Petitioner Company's total revenue from operations was Rs. 27.87 lakhs for the year 2015-16 compared to Rs. 12.75 lakhs in the previous year. Hence, the Petitioner Company was carrying on business during the aforesaid periods and that the Petitioner Company has fixed assets, inventories, trade payables and receivables.
6. That the Petitioner Company is not a dormant Company nor shell Company and that striking off the name of the Company would be prejudicial to the interest of the shareholders, directors and employees of the Company.
7. That the Petitioner Company has filed its annual accounts and annual return for the year ended 31st March, 2014. However, it is averred that inadvertently not filed the annual accounts and annual returns for the year ended 31st March, 2015 and March 31, 2016.

It is further averred that the Company has also produced copy of the Auditors Report along with the Audited Accounts for the Financial Year ending 31.03.2014, 31.03.2015, 31.03.2016 and 31.03.2017.

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 2017 and that no income tax notice has been served on the Petitioner Company in this connection, as per affidavit duly notarized dated 05.12.2017.



The Directors/Members of the Petitioner Company has also filed an affidavit duly notarized dated 05.12.2017 undertaking to file all the overdue returns of the Company such as Balance Sheet, Annual Returns and other documents, if any, 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, alongwith applicable fee soon after its restoration.

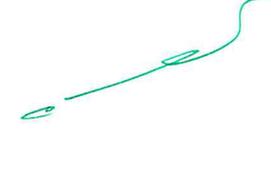
The Registrar of Companies has filed counter affidavit dated 12th January, 2018 along with annexures. The ROC herein denies all the averments made in the Petition save the averments which are specially admitted herein below and submit his counter to the Petition as under:

1. The Petitioner Company is registered with Registrar of Companies on 04.12.2006 with CIN: U74900KA2013PTCO70704 and as per the records of the Company in MCA 21 Portal, the Registered Office address is No.974, Shreeyogambika, No. 13, Old Madras Road, Bhattarahalli, KR Puram, Bengaluru 560 045. Copy of the Company Master Data is produced and marked as **Annexure-I**.
2. 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 2014-15 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 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 22.03.2017 was sent to Mrs. Suman Gupta, Director of the Company. Copies of the notices sent to the Director is produced and marked as **Annexure-III**.
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 has



defaulted in filing of the returns for four 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-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 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-IX**.



6. It is stated in the petition, that the applicant Company is an active Company as on the date of strike off and has not inadvertently filed the return as on for the year ended 31.03.2015 and 31.03.2016. 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 Company to show proof that it was an active Company at the time of strike off u/s 248(5) of the Act by the Respondent. 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. In case the Company is able to prove that it was active at the time of strike off action, then 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.

The Respondent/ 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 17th 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 2014-15 to till 2015-16 before the Respondent i.e. Registrar of Companies. The Directors are willing to continue the company since it is advantageous and favourable to them to have the same company name for extending the business activities and also stated that the company was carrying on business at the time of strike off and that the company is a genuine operational company involved in carrying on in India and elsewhere the business as researchers, manufacturers, sellers, exporters, importers, of plant and machinery which are used in Industries. 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 said period are shown at **Page No. 37 to 63**)

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 PCS for the Petitioner Company, who contended that, the Petitioner Company was carrying on business at the time of strike off and that the company is a going concern. The total income of the Petitioner Company is Rs. 11,94,749.67 for the period ending 31st March, 2017 and Rs. 27,86,861.37 for




corresponding period ending 31st March, 2016. The Petitioner Company recorded a profit of Rs. 98,244.37 for the year ended 31st March, 2016 whereas it has posted a loss of Rs. 2,50,405.33 for the year ended 31st March, 2017. The Tangible Assets of the Petitioner Company stood at Rs. 4,01,658/- as on 31st March, 2016 and Rs. 3,31,215/- as on 31st March, 2017. The Inventory was Rs. 6,19,178 and Rs. 2,31,490 for the years 2016 and 2017 respectively. The Trade Receivables stood at Rs. 6,93,832/- for the year 2016 and Rs. 4,48,094/- for the year 2017. However, inadvertently the Company has not filed the Financial Statements and Annual Returns for the year ended 31st March 2015 and 31st March 2016. ~~She~~^{She} 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.

After hearing the PCS 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 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

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. 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 is further directed to restore the name of the Petitioner company i.e. **M/s. CHEERS MANUFACTURING 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