

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

C.P.No.187/BB/2017

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

Order delivered on: 9th February 2018

**IN THE MATTER OF
BARMAN FACILITY MANAGEMENT PRIVATE LIMITED**

Barman Facility Management Private Limited
02, D.S.Regency, Top Floor, 1st Main,
1st Cross, Patel Marappa Layout,
S.G.Palya, C.V.Raman Nagar,
Bangalore-560093. -

PETITIONER

Versus

Registrar of Companies
2nd 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) : Ms. Ashok Kumar Tripathy, A.K.Tripathy & Co., Off:
Pranab Complex, # 14, 2nd Floor, 11th Main Road, Gokula
1st Stage, 1st Phase, Mathikere Main Road, Yeshwanthapur,
Bengaluru-560054 Practicing Company Secretary and
Authorised Representative for the Petitioner Company.

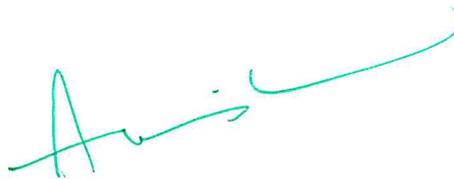
Per: **Hon'ble Shri Ratakonda Murali, Member (Judicial)** – Author

Heard on: 15/11/2017, 28/11/2017, 20/12/2017, 05/01/2018, 19/01/2018 &
31/01/2018

O R D E R

The Petitioner Company **Barman Facility Management 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 23rd September 2011 under the name and style of “**Barman Facility Management Private Limited**” with the Registrar of the Companies, Karnataka and obtained Certificate of Incorporation vide bearing CIN No. **U74140LA2011PTC060556**. The Registered Office of the Petitioner Company is situated at # 02, D.S.Regency Top Floor, 1st Main, 1st Cross, Patel Marappa Layout, S.G.Palya, C.V.Raman Nagar, Bangalore-560093.

The main objects of the Company is to carry on the business of facility management services whether with technical or non technical personnel to provide services like manpower services, housekeeping, mechanized cleaning, plumbing repairing and maintenance, labour services, electrical services, security, pest control services and integrated facility management services of industrial and commercial organizations, business house, hospitals, hotels, boutiques, parlours, educational and convection centres, offices, residential, houses and other in India or elsewhere in the world etc., Details of the objects of the Company are mentioned in the Memorandum and Articles of Association of the Petitioner Company.

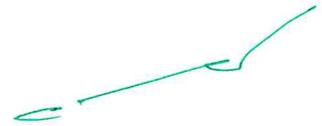
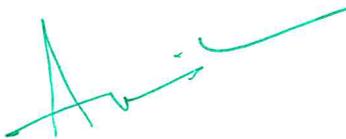
The Authorised share capital of the Company is Rs 1,00,000/- divided into 10,000 equity shares of Rs 10/- each and the Issued, Subscribed & Paid-up Share Capital is Rs 1,00,000/- divided into 10,000 Equity Shares of Rs 10/- each.

It is averred in the Company Petition that:-

- 1) the name of the Petitioner Company has been struck off by the Registrar of Companies, Karnataka, Bengaluru due to non-filing of statutory compliances viz., Financial Statements and Annual Returns for the period 2013-14 to till date which are due for filing. Consequently, the Registrar of Companies, Karnataka, Bengaluru initiated proceedings under Section 248 of the Companies Act, 2013, for the purpose of striking off the name of the company in the Register maintained by the Registrar of Companies, Karnataka, Bengaluru.



- 2) The Petitioner Company has not received any notices as required under Section 248(1) of the Companies Act, 2013 and the Petitioner Company came to know that, the name of the company has been struck off. The Registrar of Companies, Karnataka, Bengaluru has not given sufficient time to fulfil the condition as laid down under the provisions of Section 248(1) of the Companies Act, 2013 and Rules there under and at the same time also he did not given any opportunity of being heard before the aforesaid action was taken by him and allow the Petitioner Company to upload the returns.
- 3) The accounts of the Petitioner Company were prepared and audited and that the company had engaged the services of a Chartered Accountant to perform the task of filing the returns with the office of the Registrar of Companies, Karnataka, Bengaluru and this fact was not informed to the Directors of the Petitioner Company. It was only in May 2017 when the balance sheet as at 31/03/2016 and the Auditor's Report were ready to be filed with the Registrar of Companies, Karnataka, Bengaluru the Petitioner Company came to know that, the name of the company has been struck off by the Registrar of Companies, Karnataka, Bengaluru.
- 4) Upon restoration of the name of the company in the register maintained by the Registrar of Companies, the Petitioner Company shall file all its outstanding statutory documents i.e., financial statement and annual returns for the period from 2013-14 to till date alongwith the filing fees and the additional fee, as applicable on the date of actual filing and the certified copy of the Tribunal for the restoration of the name of the company in the register maintained by the Registrar of Companies.
- 5) In the event the name of the Company is not restored in the register maintained by the Registrar of Companies, the Petitioner Company as well as its shareholders, shall suffer irreparable loss and hardship and will be highly prejudiced.



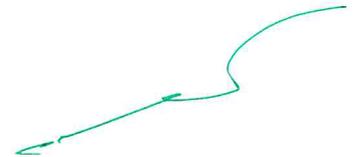
6) The Petitioner Company has not entered into any such material transaction of sale/purchase which can be specifically produced before the Tribunal and the details of the transactions have already been contemplated in the balance sheets and the Profit & Loss Accounts of the Company.

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 23rd 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 which is as follows:

- 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 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 Mr. Jyotish Kumar Gogoi, Mr. Tilak Payeng and Mr. Rajen Phukan, 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 **Annexure-III, IV & V** respectively.
- 2) In the said notice STK-1 that was sent to the directors of the company, it was inter-alia mentioned that the petitioner company has not been carrying on any business or operation for three immediately preceding financial years and that the company has not filed any application u/s 455 of the Companies Act, 2013 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.

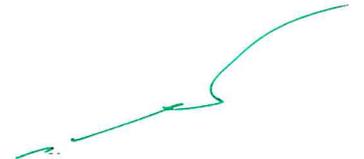
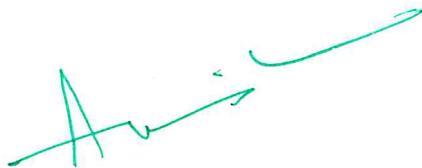


- 3) It is submitted that a consolidated notice in STK-5 in English and Hindi was released as per Rule 7 of the Companies (Removal of name of Companies from the Register of Companies) Rule, 2016, in the Official website of the Ministry of Corporate Affairs on 28.04.2017 and in the official Gazette on 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- III, 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 -VI**. 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-XI**.
- 5) It is stated in the petition that, the company has not filed the balance sheets and the Annual Report after the year 2013-14 to till 2015-16 and has stated that the Auditor entrusted with the work of filing the returns has not filed the same. The petitioner though has not claimed anywhere in the petition that it is a functioning company, has however enclosed the copies of the Balance Sheet of the year 2013-14 to 2016-17 as annexure to the company petition herein. 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.
- 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 17th July 2017.

It is also averred in the report of Registrar of Companies, Karnataka, Bengaluru that, 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 management services like manpower services, housekeeping, mechanised cleaning, plumbing repairing and maintenance etc., 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 till 2016-17 are shown at **Annexure-2.**

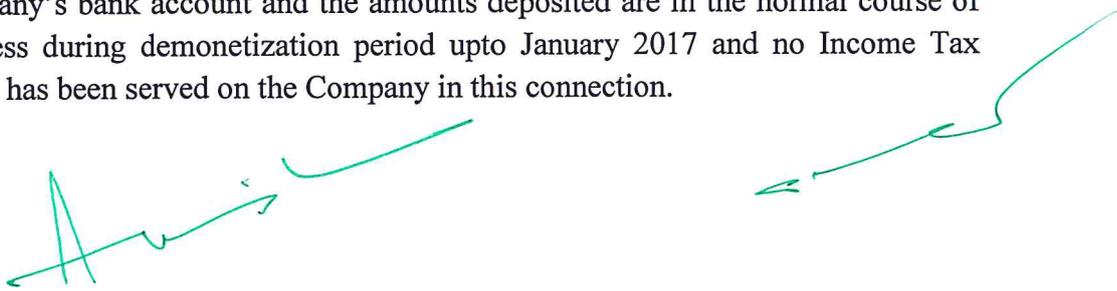


Section 252(3) stipulates that:

“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 accounts of the Petitioner Company were prepared and audited and that the company had engaged the services of a Chartered Accountant to perform the task of filing the returns with the office of the Registrar of Companies, Karnataka, Bengaluru and this fact is not revealed to the Directors of the Petitioner Company. He further contended that, the Petitioner Company will submit the 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 28th November 2017 alongwith Affidavit of the Director of the Company giving justification for restoration of name of the Company in the Register of Companies as maintained by Registrar of Companies, Karnataka, Bengaluru. It is stated in the Affidavit that, after receiving the order of Revival of the company from this Hon'ble Tribunal, he 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. It is further 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 upto January 2017 and no Income Tax notice has been served on the Company in this connection.

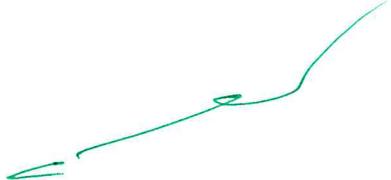
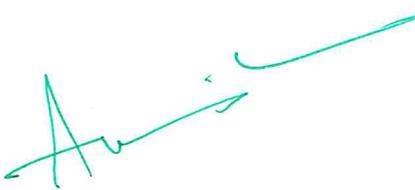


We have seen the Income Tax Return file with the Income Tax Department for the assessment year 2016-17. We have also seen the latest Balance Sheet as on 31st March 2017 of the Petitioner Company. The Petitioner Company is having Non-current Assets worth of Rs 23,915/-and Current Assets of Rs 8,85,486/- and the turnover of the Petitioner Company is Rs 24,92,986/-. Further the turnover of the Company was Rs. 23,60,970/- for the financial year ending 31/03/2016 as per Balance Sheet. 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:

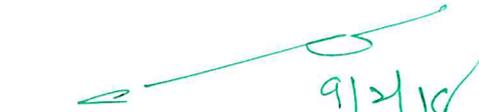
The Petitioner Company shall within 30 (thirty) days of the date of the receipt of this order cause a certified copy of this Order along with the copies of Audited Balance Sheet and all other Statutory filings for the period 2013-14, 2014-15, 2015-16 and for subsequent year in the prescribed format as 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. 75,000/- 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, Bengaluru is further directed to restore the name of the Petitioner Company i.e. **Barman Facility Management 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