

IN THE NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH

C.P.No.195/BB/2017  
Under Section 252(3) of Companies Act, 2013  
Order delivered on 9<sup>th</sup> February, 2018

IN THE MATTER OF  
M/s. SUTEK SYSTEMS (INDIA) PVT. LTD.

M/s. Sutek Systems (India) Pvt. Ltd.  
#1/33, II Floor, 80' Road, KHB Colony  
Basaveshwar Nagar  
Bengaluru 560 079

... Petitioner

Vs.

Registrar of Companies, Karnataka  
'E' Wing, 2<sup>nd</sup> 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): Mr. Vinayak Bhat  
No.1584, 36<sup>th</sup> Cross, 100 Ft. Ring Road  
BSK II Stage  
Bangalore 560 070  
Practicing Company Secretary for the Petitioner

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

Heard on : 16.11.2017, 30.11.2017, 13.12.2017, 03.01.2018, 16.01.2018 and 02.02.2018

ORDER

The Petitioner Company M/s. Sutek Systems (India) Pvt. Ltd. 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 Company Petition are briefly described hereunder:

1. The Petitioner Company **M/s. Sutek Systems (India) Private Limited** was incorporated with the Office of the Registrar of Companies, Karnataka on **9<sup>th</sup> March, 2012** bearing CIN: **U29221KA2012TC062935**, under the provisions of the Companies Act, 1956 as a Private Limited Company, with its **Registered Office at No. 1/33, II Floor, 80 Ft. Road, 1<sup>st</sup> Stage, KHB Colony, Basaveshwaranagar, Bangalore 560 079**
2. The Authorised Share, Issued, Subscribed and Paid-up Capital of the Petitioner Company is Rs.2,00,000/- divided into 20,000 equity shares of Rs.10/- each.
3. That the Respondent Party has not followed the procedure prescribed under Section 248(1) of the Companies Act, 2013, notices as required under Section 248(1) were not sent and has not proceeded to issue notice under Section 248(5) publishing the name of the petitioner Company in the Official Gazette on 17<sup>th</sup> July, 2017 of STK-7 ROC (B) 2017/1. Copy of the notification dated 17<sup>th</sup> July, 2017 of STK-7 ROC (B) 2017/1 issued by the Respondent Party under Section 248(5) of the Companies Act is enclosed and marked as Annexure-2.
4. That the Petitioner Company has been active since incorporation and has also been maintaining all the requisite documentation, as per the provisions of the Companies Act, 2013.
5. That the Petitioner Company did not receive any show cause notice, nor was it afforded any opportunity of being heard before the aforesaid action was taken by the Respondent Party.



6. That the Petitioner Company submits that the present petition is within the limitation period stipulated by Section 252(3) of the Companies Act, 2013 i.e. 20 years.
7. It is further averred that the accounts of the Petitioner Company were prepared and audited and that the Company had engaged the services of a Company Secretary to perform the task of filing the returns with the office of the Registrar of Companies and in the meantime, the Company's name was struck off by the ROC. Hence the Company was not able to file the pending Annual Returns. It is further averred that the Petitioner Company has filed Balance Sheets and Annual Returns upto March, 2014, when the Balance Sheet and Annual Returns as at 2015 and 2016 along with the Auditor's Report in respect thereof was not ready to be filed with the Respondent Party that the fact of non-filing of the returns and other documents with the Respondent Party, as well as the fact that the Petitioner's Company name had been struck off in the Register maintained by the Respondent Party, was known to the Petitioner Company.
8. That the object of Section 252(3) of the Companies Act is to give a chance to the Company, its members and creditors to revive the Company which has been struck off by the Registrar of Companies, within a period of 20 years, and to give them an opportunity of carrying on the business only after the Hon'ble Tribunal is satisfied that such restoration is necessary in the interest of justice.
9. That after coming into the notice of the striking off the Company, the Company has filed all the pending Balance Sheets, Profit and Loss accounts and Annual Returns for previous two years, which were pending on the part of the Company. In case this Hon'ble Tribunal requires any other information, account or records from the Company, the Company and its Management shall file the same at the earliest. The copies of all the

Balance Sheets, Profit and Loss accounts and Annual Returns filed by the Company have been enclosed and marked at Annexure-4.

Main objects of the Petitioner Company is to carry on the business to Engineer, develop, design, assemble, manufacture, produce, import, export, sell, buy and otherwise deal in all types of industrial automation products like programmable logic controllers, servo motors and drives. Variable frequency drives, human machine interfaces and allied products and also the supporting products SMPS (power supplies, relays, MCBs, computers and software connected to program main products and to carry on the programming the machineries and support customers in integrating these products. **A copy of Memorandum of Association and Articles of Association is enclosed and marked as Annexure-1.**

The Company has also produced the Auditors Report along with the Audited Accounts for the Financial Year ending 31.03.2015, 31.03.2016 and 31.03.2017 as well as original VAT Returns for the period June 2017 and GST Invoice dated 4th Sept., 2017. The statement of Profit & Loss for the period ended 31<sup>st</sup> March, 2017 is as under:

(Value in Rs.)

Sl. No.	Particulars	Year Ended 31 <sup>st</sup> March, 2017	Year Ended 31 <sup>st</sup> March, 2016
01	Revenue from Operations (Gross)	4,97,96,248	4,28,00,207
02	Other Incomes	--	--
	Total Income	4,97,96,248	4,28,00,207

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. 8<sup>th</sup> November, 2016 to December 30, 2016 and that the Petitioner Company has not received any Scrutiny or Notice from Income Tax Department.

The Directors/Members of the Petitioner Company has also filed an undertaking dated 29<sup>th</sup> Nov., 2017, to file all the pending/overdue Balance Sheets, and Annual Returns 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.

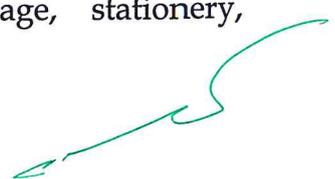
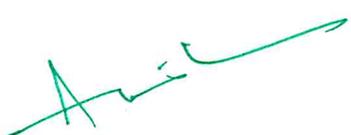
The Registrar of Companies has filed counter affidavit dated 1<sup>st</sup> February, 2018 along with annexures. The ROC herein denies all the averments made in the Petition save the averments which are specially admitted herein below and submit his counter to the Petition as under:

1. The Petitioner Company is registered with Registrar of Companies on 09.03.2012 with CIN: U29221KA2012PTC062935 and as per the records of the Company in MCA 21 Portal, the Registered Office is 1/33, II Floor, 80 Ft. Road, 1<sup>st</sup> Stage, KHB Colony, Basaveshwaranagar, Bangalore 560 079. Copy of the Company Master Data is produced and marked as **Annexure-I**.
2. It is submitted that 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 Petitioner Company has not filed either the Balance Sheet or the Annual Returns from the year 2014-15 and 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 Mr. Gururaj Joshi Shridhar Rao, Ms. Suhasini Joshi, Mr. Narasimha Murthy Laxmikant Rao Kulkarni and Mr. Vani Narasimha Murthy Kulkarni, 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 and VI** respectively;

3. In the said notice STK-1 that was sent to the Company and to the Directors of the Company, it was mentioned that interalia the Company is not carrying on any business or operation for a period of two immediately preceding financial years nor made any application under Section 455 of the Act 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-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 21.06.2017 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-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 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-X**.

6. It is stated in the petition, that the Petitioner have prepared and audited and that the Company had engaged the services of a Company Secretary to perform the task of filing the returns with the office of Registrar of Companies and in the mean time, the Company's name was struck off by ROC and therefore the Company was not able to file the pending Annual Returns upto March 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. Therefore it is incorrect on the part of the Petitioner to state that no show cause notice was sent to the Company and to the Directors.
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 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 the 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 demand draft favouring the Pay & Accounts Officer, Ministry of Corporate Affairs, Southern Region, Chennai, towards the expenses incurred by the Respondent under Section 248 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.

After hearing the PCS for the Petitioner Company and perusal of material on record, the report of 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 since the Petitioner Company is a going concern, the name of the Company to be restored in the Register of Companies as maintained by Registrar of Companies.

**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. SUTEK SYSTEMS (INDIA) PVT. LTD.** 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