

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

C.P.No.29/BB/2018
Under Section 252(3) of Companies Act, 2013
Order delivered on 13th February, 2 018

IN THE MATTER OF

M/s. SILVERSHINE PROJECTS (INDIA) PRIVATE LIMITED

M/s. Silvershine Projects (India) Private Limited
No.81, 5th Cross, Akshayanagar
Attur Layout, Yelahanka
Bengaluru 560 064

... 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):

Mr. PK Pande
PK Pande & Associates
No.139, Shalimar Galaxy, 3rd Floor
Sheshadripuram Main Road
Bangalore 560 020
Practicing Company Secretary for the Petitioner

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

Heard on : 15.01.2018 and 05.02.2018

ORDER

The Petitioner Company 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.

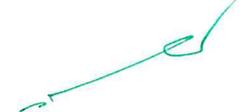
The averments made in the Company Petition are briefly described hereunder:

The Petitioner Company **M/s. Silvershine Projects (India) Private Limited** was incorporated with the Office of the Registrar of Companies, Karnataka on **21st July, 2011** bearing CIN: **U45400KA2011PTC059661**, under the provisions of the Companies Act, 1956 as a Private Limited Company, with its **No.81, 5th Cross, Akshayanagar, Attur Layout, Yelahanka, Bengaluru 560 064**.

The Authorised Capital of Rs. 5,00,000/- divided into 50,000 Equity Shares of Rs. 10/- each and the Paid-up Capital of Rs. 1,00,000/- divided into 10,000 Equity Shares of Rs. 10/- each. **Copy of the Certificate of Incorporation, Memorandum of Association and Articles of Association is enclosed and marked as Annexures-A1, A2 and A3 respectively.**

Main objects of the Petitioner Company is to carry on the business of construction projects, road works, asphaltting, property developers and to undertake maintenance of and to acquire by purchase, lease, exchange, hire and otherwise lands, properties, buildings and estates of any tenure or any interest therein, to sell, lease, let, mortgage or otherwise dispose off the same and to purchase, construct and sell for self or for any person, freehold or leasehold lands, house properties, buildings, offices, factories, work-shops, farm houses, farms and any kind of landed properties or any share/interest therein and to carry on the business of land and estate agents on commission or otherwise.

That ROC, Karnataka has displayed on the website of MCA the names of 14827 Companies through STK-5 dated 28.04.2017 stating 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



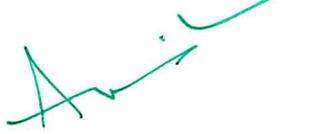
Company under Section 455; that it will strike off the names of these Companies within 30 days from the date of the display of the aforementioned STK-5 unless objections were filed within the time prescribed. Of the 14827 Companies to whom this notice was applicable, one is the appellant Company. Copy of the notice is enclosed and marked at **Annexure-A4**.

That the Company's representative inquired about the aforesaid notice at the office of ROC, Karnataka and that he was informed that as the Company has not filed audited financial statements viz. Balance Sheet, Profit & Loss Account, Cash Flow statement and the Annual Return continuously for the immediate past two years, the said notice was applicable to the Company and the Company understood that the aforesaid notice has been sent because of non-filings of aforementioned financial statements.

That the Petitioner Company is doing its business on an 'on-going concern' basis and was maintaining the Current Account with Tamilnad Mercantile Bank Ltd., Yelahanka Branch, Bangalore and was transacting day to day business through this account. The Bankers of the Company informed that the said bank account has been frozen due to the status of the Company 'Struck Off' as per the communication the bankers received from Indian Bankers Association.

The Petitioner Company is having a turnover of Rs.1,44,33,726/- for year ended 31st March 2015 and Rs.2,50,88,859/- for year ended 31st March 2016 and Rs.4,51,53,502/- for year ended 31st March 2017 as per their audited accounts furnished to the Tribunal. Further the petitioner company has submitted Bank statements as per Annexure-A5 reflecting both deposits and withdrawals for July 2017. All this reflects that the Petitioner Company is carrying on business.

That the Petitioner Company has prepared the financial statements for the FYs ended 31.03.2012, 31.03.2013, 31.03.2014, 31.03.2015, 31.03.2016 and 31.03.2017 on time, get them audited on time and adopted them within the time prescribed in law. It is further averred that due to change in guard in the clerical staff in the finance



department, new comers forgot to file these audited and adopted financial statements with ROC, Karnataka, from the incorporation and certified true copies of the audited financial statements, auditor's report and Directors report along with the annual returns from last 5 FYs 2011-12, 2012-13, 2013-14, 2014-15 and 2015-16 showing that the Company is doing business continuously, are attached as **Annexure-A6 to A10 respectively.**

It is averred that non-filing these documents was not intentional and wanton and that the Petitioner Company is ready to file them with applicable additional filing fee once this Hon'ble Tribunal restores its status to 'active'.

That the Petitioner Company as on the date of this petition it is due to file the financial statements and the Annual Returns for the FY 2016-17 and it has prepared, audited and adopted them in the shareholders meeting. Copy is enclosed and marked as **Annexure-A11.**

That the Petitioner has filed Income Tax Returns for the AYs 2015-16, 2016-17 and 2017-18, which goes to show that the Company is an 'on-going' concern, are enclosed and marked as **Annexure-A12 and A14** respectively.

That the Petitioner Company has made a turnover during the financial year 2016-17. It shows that the Company has turnover, liabilities and bank balances in its books and the repayment of the liabilities has affected and will be aggravated unless the status 'strike off' is restored to 'active'. Further, there are more number of employees depending upon the size and nature of the project they undertake, which is now stopped for the time being because of freezing of its bank account and unless the status of the Company is restored to 'active' their life will be in jeopardy.

That the Company received another notice from ROC, Karnataka in Form No.STK-7 dated 17.07.2017 stating that pursuant to the notice dated 28.04.2017, the name of the Companies has been struck off from the Register of Companies and the

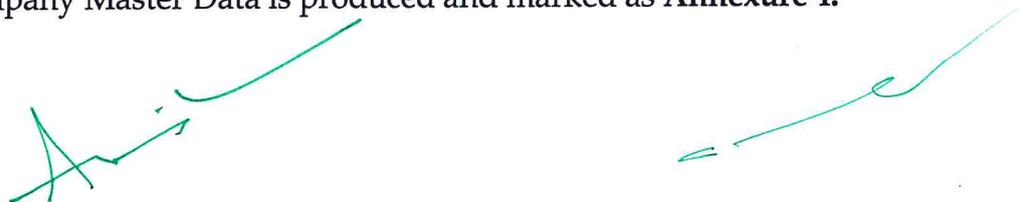
Company has been dissolved. A copy of the notice is enclosed and marked as **Annexure-A15**.

The Directors/Members of the Petitioner Company has also filed an undertaking to file all the overdue returns such as AoC-4 (Balance Sheets, Profit & Loss Accounts, Cash Flow statements along with relevant schedules) and MGT-7 (Annual Returns) and other related documents 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, as per affidavit duly notarized dated 04.12.2017. Copy of the undertaking is enclosed and marked as **Annexure-A16**.

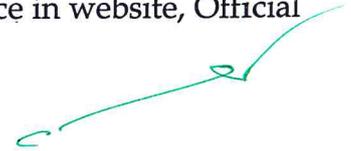
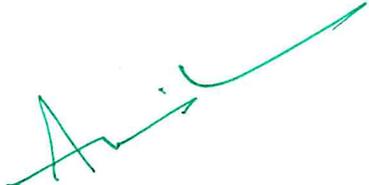
The Directors/Members of the Petitioner Company has also confirmed that no abnormal amount has been deposited into the Company's Account during demonetization period i.e. Sept., 2016 to January, 2017 and that the Petitioner Company has not received any Scrutiny or Notice from Income Tax Department as per affidavit duly notarized dated 04.12.2017. Copy of the undertaking is enclosed and marked as **Annexure-A17**.

The Registrar of Companies has filed counter affidavit dated 2nd 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 21.07.2011 with CIN: U45400KA2011PTC059661 and as per the records of the Company in MCA 21 Portal, the Registered Office is 81, 5th Cross, Akshayanagar, Attur Layout, Yelahanka, Bangalore 560 064. 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 date of incorporation 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 31.03.2017 was sent to Mr. Karunakar Shamaraji and Mr. Bhaskarraju Swamy Raju, 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 and IV** 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 to three 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 Vajaya Karnataka (Kannada Edition) and in English in the Times of India on 13.05.2017, 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 Vijaya Karnataka and the Times of India are produced and marked as **Annexure-V and VI** 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-VII**. 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-VIII**.
6. It is stated in the petition, that the Petitioner Company have prepared and audited and that the change in guard in the clerical staff etc. is the reason for the default in filing the returns with the office of Registrar of Companies and in mean time, the Company was struck off by the 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.
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,



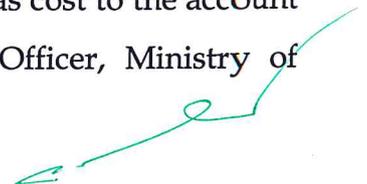
- a. direct the Petitioner to undertake to file the overdue returns up to date within 30 days in the MCA 21 Portal from the date of the order of NCLT reviving the Company and comply with the provisions of the Companies Act, 2013;
- b. direct the Petitioner to pay a cost as decided by this Hon'ble Tribunal 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 Practicing Company Secretary 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. 90,000/- 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. SILVERSHINE PROJECTS (INDIA) 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