

IN THE NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH

C.P.NO.145/BB/17

Under Section 252(3) of Companies Act, 2013

IN THE MATTER OF

**MINDSCAPES ENHANCE COMMUNICATION PRIVATE LIMITED**

**Vs**

**REGISTRAR OF COMPANIES, KARNATAKA**

Coram: 1. Hon'ble Shri.RatakondaMurali, Member Judicial  
2. Hon'ble Shri.Ashok Kumar Mishra, Member Technical

Order delivered on 13<sup>th</sup> February, 2018

For the Petitioner (s): Arun Chandra.K, PCS

Per: Hon'ble Shri.RatakondaMurali, Member Judicial

Heard on.17.10.2017, 24.10.2017, 30.11.2017, 20.12.2017, 10.01.2018, 29.1.2018

**MINDSCAPES ENHANCE COMMUNICATION PRIVATE LIMITED**  
No.204, Money Chambers, No.6, K.H.Road,  
Bangalore-560027

**Vs**

**REGISTRAR OF COMPANIES, KARNATAKA**  
'E' Wing, 2<sup>nd</sup> Floor, KendriyaSadana,  
Kormangala, Bangalore-560034.

**ORDER**

The Petitioner Company M/s Mindscapes Enhance Communication 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 was originally incorporated on 16<sup>th</sup> June, 2011 under the name and style of "Mindscapes Enhance Communication Private Limited" in the State of Karnataka vide CIN No.U74900KA2011PTC059165. The Registered Office of the Petitioner Company is situated at No.204, Money Chambers, No.6, K.H.Road, Bangalore-560027.

The Authorised Capital of the Petitioner Company is Rs.1,00,000/- divided into 10,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital is Rs.1,00,000/- divided into 10,000 of Rs.10/- each.

The objects of the Petitioner Company is to provide out door& out of home advertising consultancy, space selling and Media Management, Procuring and supply of advertising materials, designing, marketing communication and promotional activities. In shop branding, retail planning and branding, small promotions, event management, celebrity management and any other allied activities. **The copy of Memorandum of Association and Articles of Association is shown in Annexure-A1.**

The Petitioner Company submits that it was in the process of completing the statutory compliances. The Annual General Meeting has to be convened within 15 months from the date of last AGM or six months from the date of closure of financial year whichever is earlier. The due date for convening the AGM for the financial year 2015-16 was on 30<sup>th</sup> September, 2016. The Company has duly convened the annual general meeting on time and has adopted its financial statements at the Annual General Meeting of the company.

The Petitioner Company submits that the financial statements shall be filed with Registrar of Companies within 30 days of Annual General Meeting and Section 92 mandates to file the Annual return within 60 days of Annual General Meeting. Inadvertently the

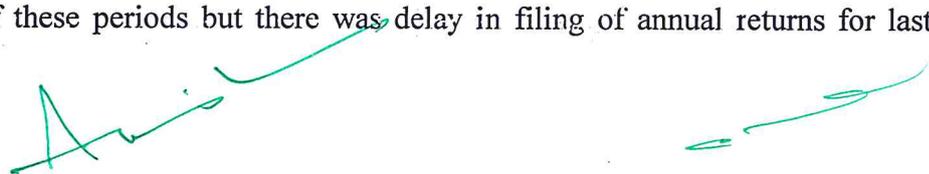
company failed to make the filing of financial statements before the due dates. The Management was not fully equipped with the professional staff and the Directors were not aware about the legal obligations of filings and requisite compliance then. Due to unavoidable circumstances the company has caused delay in filing the financial statements for the financial year 2011-12 to 2014-15.

The Petitioner Company submits that the Petitioner Company has filed its financials till 31<sup>st</sup> March, 2015 on:

Financial Year	SRN	Form	Challan Date
FY 11-12	G46897245	20B	26/6/2017
	G46679551	23AC and ACA	22/06/2017
FY 12-13	G46900973	20B	26/6/2017
	G46699328	23AC and ACA	22/06/2017
FY 13-14	G46900668	20B	26/6/2017
	G46694691	23AC and ACA	22/06/2017
FY 14-15	G46687992	AOC 4	22/6/2017
	G46993192	MGT 7	27/06/2017

The Petitioner Company states that its name has been struck off by the Registrar of Companies, Karnataka in the month of July, 2017.

The Petitioner Company submits that the Company has received notice under Section 248 of the Companies Act, 2013 from Registrar of Companies intimating their intention to strike off the name of the company from the Register of MCA, on the assumption that the Company was not operating for last two preceding financial years. Company was operating during whole of these periods but there was delay in filing of annual returns for last two



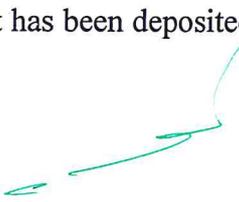
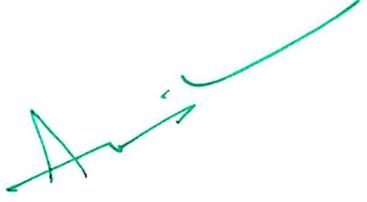
financial years from the end of the Management. Since the Directors of the company were out of station and were preoccupied on the other assignments there occurred a delay in responding to the notice. The Petitioner Company further submitted that upon getting the information of the notice served, the directors have initiated immediate actions for making the filings and the same were updated on the dates mentioned in the petition. The Petitioner submits that soon after making the filings, the directors came to know that the status of the company has been marked as "Strike off".

The Petitioner Company further averred that Company has received the notice from the Registrar to file the Balance Sheet, Profit and Loss Account, Cash Flow Statement and the Annual Return continuously for the immediate past two years.

The Petitioner Company in order to establish that the company is ongoing concern has filed Financial Statements for the Financial Year ending on 31.3.2016 and 31.3.2017. On perusal of the Financial Statements the company is earning revenue from operations of Rs.5,81,334/-. Therefore the company name may be restored. **The certified true copies of audited financial statements for the Financial Year 2015-16 and 2016-17 are shown as Annexure-2 and filed by way of memo dated 30.11.2017 respectively.**

The Petitioner Company had filed the Affidavit dated 13th November, 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 Petitioner Company had filed another affidavit dated 13<sup>th</sup> November, 2017 of the Directors of the Petitioner Company stating that no abnormal amount has been deposited into



the Company's account during demonetisation period and no Income Tax notice has been served to the appellant company on this issue.

The Directors of the Petitioner Company filed an Affidavit dated 24th January, 2018 that the company was incorporated on 16/6/2011 with a motive to achieve the objects of the company but due to unavoidable circumstance there caused uncertainty in implementing plans and non-compliance and resulted the status of the company as De-active.

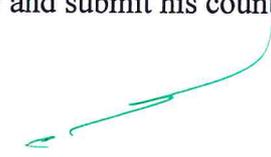
The Directors of the Petitioner Company stated in the Affidavit that in order to achieve the objects of the company they have decided to expand the business by investing in various related activities and provide better consultancy, management and other related services in an effective manner through various experts with proper compliance and by laws.

The Directors of the Petitioner Company stated that the company will actively carry on the business with proper compliance without any delay after restoration of the name of the company.

It is further stated that the Company has duly prepared the Annual Returns and Balance Sheet as on 31.3.2017. The Income Tax Returns also have been filed till the financial year ended 31.3.2017. Copies of IT returns are enclosed.

The Petitioner Company has filed the Balance Sheet for the financial year 2016-17 to establish that the company is ongoing concern. The Revenue from operations of the Petitioner Company is Rs.5,81,334/- , Long-term borrowings of the Petitioner Company is Rs.36,500/-, Trade Payables of the Petitioner Company is Rs.2,77,735 for the financial year 2016-17.

The Registrar of Companies has filed Counter affidavit dated 9th 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 registered with the Registrar of Companies on 16/6/2011 with CIN No.U74900KA2011PTC059165 and as per the records of the Company in MCA 21 portal. The Registered Office address is No.204, Money Chambers, No.6, K.H.Road, Bangalore-560027. 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 2013-14 to till 2015-2016. Therefore the Respondent had reasonable cause to believe that the Company is not carrying on any business or operation and therefore a notice in Form STK-1 dated 17<sup>th</sup> March, 2017 was sent to the company. The copy of the said notice is shown as **Annexure II**. Further STK-1 notice dated 27/03/2017 was sent to the company and to Mr.Ranadeb Paul and Ms.Sumali Paul, Directors of the company to the address available in the MCA 21 portal. Copies of the notices sent to Directors are produced and marked as **Annexure-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 has defaulted in filing of the returns for two 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 with 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 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 Vijay Karnataka and the Times of India are shown as **Annexure – V, VI, VII, VIII respectively.**

- v.) It is submitted that since neither cause was shown to either the physical notices nor 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 the 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 not filed the Balance sheet and the Annual report for the year 2011-2012 to till 2015-16 before the due date. 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. The company has however filed the documents after the due date and has also enclosed the copy of balance sheet of the year 2015-16 in page no.42-47 of the company petition as per which it is as per which it is a functioning company.
- vii.) There is no prosecution, inspection, technical scrutiny and compliant 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 upto date within 30days 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 2012, as mandatorily required under the Act.

The Petitioner Company has committed default in not filing the Statutory Returns for the Financial Years 2011-12 to till 2015-2016 before the Respondent i.e. Registrar of Companies. The Petitioner in order to show that the company was carrying out 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 from 2011 -2012 till 2015-2016 along with this Petition to show its bonafide of carrying the Business. **The copies of the Audited Balance Sheet for the said period are shown as Annexure VII & VIII of the petition.**



*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 and hence the name of the Company to be restored in the Register of Companies as maintained by Registrar of Companies.

#### **THIS TRIBUNAL DO FURTHER ORDER**

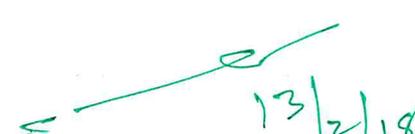
The Petitioner Company shall within thirty days of the date of the receipt of this order cause a certified copy of this Order along with the copies of Audited Balance Sheet and other Statutory filings for the period of default i.e. from 2011-2012 to till 2015-2016 and the subsequent year in prescribed format as required under the Companies Act, 2013 be filed with the Registrar of Companies.

The Petitioner Company is directed to pay Rs.1,00,000/- 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. MINDSCAPES ENHANCE COMMUNICATION 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