

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

C.P.No.155/BB/2017

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

Order delivered on: 9th February 2018

IN THE MATTER OF
M/S CONDOR CONSTRUCTIONS PRIVATE LIMITED
VS.
REGISTRAR OF COMPANIES, KARNATAKA

M/s Condor Constructions Private Limited
No.101/1, Richmond Road
Richmond Circle
Bengaluru, Karnataka – 560 025

.. PETITIONER

Versus

The Registrar of Companies
2nd Floor, E-Wing, Kendriya Sadan,
Koramangla, Bengaluru-560 034

.. RESPONDENT

Coram: Hon'ble Shri RatakondaMurali, Member (Judicial)
Hon'ble Shri Ashok Kumar Mishra, Member (Technical)

For the Petitioner (s): M/s K.P. Associates, PCS

Per: **Hon'ble Shri Ashok Kumar Mishra, Member (Technical)** – Author

Heard on: 02.11.2017, 17.11.2017, 08.12.2017, 21.12.2017, 03.01.2018,
16.01.2018, 22.01.2018

ORDER

The Petitioner Company M/s Condor Constructions 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 deemed fit in the circumstances of the case.

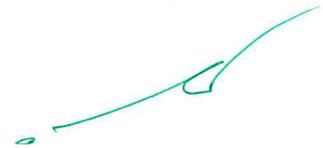
The averments made in the Company Petition are briefly described hereunder:-

The Petitioner Company was originally incorporated on 26.08.2008 under the name and style of "M/s Condor Constructions Private Limited" with the Registrar of the Companies, Karnataka and obtained Certificate of Incorporation bearing CIN No. U70109KA2008PTC047581.

The Registered Office of the Petitioner Company is situated at No.101/1, Richmond Road, Richmond Circle, Bengaluru, Karnataka – 560 025.

The authorised share capital of the company is Rs.1,00,000/- divided into 10,000/- equity shares of Rs.10/- each. The issued, subscribed and paid up share capital of the Company as on the date of application is Rs.1,00,000/- comprising of 10,000 fully paid up equity shares of Rs.10/- each.

The main object of the Petitioner Company is to carry on the business as dealers, owners, agents, brokers of housing projects, whether rural or urban, residential, commercial or industrial for which purpose to acquire or purchase, take on lease or in exchange, hire or by any other means obtain ownership of and/or option over any freehold or other property of any tenure, estate or interest or any rights, privileges or easements, over or in respect of any property, land or building; to improve, alter, furnish, construct, promote, develop finance or subsidise the same and to dispose off or maintain, assist in sale of the same; to build townships, buildings, residential, cultural, sports, recreational, commercial complexes, including restaurants and hotels, markets, or conveniences, drainage, sanitation facility, electricity, air-conditioning, water, telephone and television installations, and to deal with the same in any manner whatsoever, and to build, take on lease and/or rent, purchase or acquire in any manner whatsoever, any apartments, houses, flats, rooms, floors or other accommodation and to let or dispose of the same on instalment basis, hire-purchase basis, deferred payment basis or by outright sale whether by private treaty or by public auction or in any other mode of disposition all or any integral part thereof.



It is submitted that the Respondent has issued a public notice inviting objection for the 'strike off', which was also not known to the Petitioner. The Respondent again issued public notice declaring that the name of the Petitioner Company has been struck off from the Register and also declared that the same stands dissolved, which fact was also not known to the petitioners. Petitioner came to know about the name of the Company being struck off under section 248(5) of the Companies Act, 2013 when they were in the process of filing of certain documents.

It is submitted by the Petitioner Company that the Company has been very much in operation during the period and was carrying on the business and operation. The accounts of the Company have been duly audited and the Company has filed the same for the Assessment Years 2011-12 to 2015-2016. It is their case that non-filing of the Financial Statements and the Annual Return is owing to inadvertent lapse to comply with the regulation. The Company is primarily engaged in the real estate business and submits that if the Company's name is not restored and revived it will be prejudicial to the interest of the contributories, employees and against the principles of natural justice.

The Practicing Company Secretary has also stated that, the Appellant has filed this petition within the limit laid down under section 252(3) of the Companies Act, 2013 and will take action to streamline the activities of the company in compliance with the requisite statutory provisions.

The Registrar of Companies, Karnataka, Bengaluru has filed Counter Affidavit dated 20th December 2017 along with Annexures.

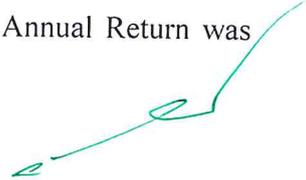
The Registrar of Companies, Karnataka, Bengaluru denied all the averments made in the petition which are specially admitted herein and submitted as follows:

- 1) 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 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 2011-12 to 2015-2016. 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 18/03/2017 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 Sri Ugendar Sariraju and Sri Sakshi Sharma, 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 **Annexures-III & IV**.

- 2) That 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 five 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 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) 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 **Annexures-V, VI, VII & VIII respectively**.
- 4) 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 Return was

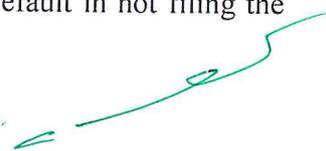
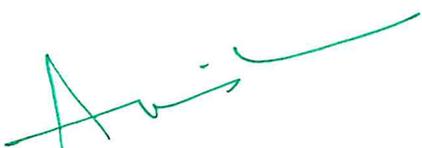


filed by the Petitioner company till 21.06.2017 the day on which the list of defaulting companies were crystallized, the Respondent proceeded to strike off the name of the Petitioner Company from the Register of Companies and published a notice in STK-7 in the homepage of the MCA on 17.07.2017. A copy of the said STK-7 Notice is shown as **Annexure – 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 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**.

- 5) That there is no prosecution, inspection, technical scrutiny and complaint pending against the company.
- 6) That the petitioner company has nowhere in the petition claimed that the company was carrying on the business at the time of strike off and even as per the balance sheets that are attached, the company has never been active and therefore it is a fit case for strike off. If the company is allowed to be revived then the Government's crackdown on shell/dormant companies will be jeopardised.
- 7) That the Petitioner has prayed that the name company be restored to the Register of Companies under section 252 of the Act. Hence it is respectfully prayed that this Hon'ble Tribunal may be pleased to pass such orders as deemed fit and proper in the circumstances of the case.

The Respondent/Registrar of Companies, Karnataka, Bengaluru has 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 dated 17th July 2017.

It is also averred from the report of Registrar of Companies, Karnataka, Bengaluru that the Petitioner Company has committed a default in not filing the



Statutory Returns for the Financial Years 2011-12 to 2015-2016 i.e., for a period of five years. Though the petitioner company has claimed that the company was carrying on the business at the time of strike off, copies of the balance sheets as at 31.03.2012 to 31.03.2016 and income statement for the said period provided to this Bench by the petitioner reflect that the company has never been active and there are no revenues from operation in the said periods as such and therefore it is a fit case for strike off. As claimed by the Respondent if the company is allowed to be revived, then the Government's crackdown on shell/dormant companies will be jeopardised. Therefore, this petition is liable to be dismissed and accordingly dismissed.


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL


(RATAKONDA MURALI)
MEMBER, JUDICIAL