

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

C.P.NO.16/BB/2018

Under Section 252(3) of Companies Act, 2013

Order delivered on 13th February 2018

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

IN THE MATTER OF
SPARROW PROJECTS INDIA PRIVATE LIMITED

Sparrow Projects India Private Limited
No.6 & 7, Anugraha Layout
B.Narayanapura, Off PWD Road
Mahadevapura, Bengaluru
Karnataka – 560 016
Represented by its Director
Mr.Gadiraju Vasu

.. Petitioner

Vs

REGISTRAR OF COMPANIES, KARNATAKA
'E' Wing, 2nd Floor, KendriyaSadana,
Kormangala, Bangalore-560034.

.. Respondent

For the Petitioner (s): Sri V.Venkatarami Reddy, Advocate

Per: Hon'ble Shri. Ashok Kumar Mishra, Member (Technical)

Heard on: 08.01.2018, 29.01.2018

ORDER

The Petitioner Company Sparrow Projects India 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 the Registrar of Companies

The averments made in the petition are as follows:

The Petitioner Company is a private limited company incorporated on 14th March 2012 in the State of Karnataka vide **CIN No.U45202KA2012PTC063046**. The Registered Office of the Petitioner Company is situated at Nos. 6 & 7, Anugraha Layout, B.Narayanapura, Bengaluru – 560 016 Karnataka.

The main object of the Petitioner Company is to undertake projects, whether on a turnkey basis or otherwise, for formation, development, construction, erection, demolition, re-erection, alteration and re-modeling of industrial layouts, technology parks, special economic zones and to undertake infrastructure projects like construction of roads, highways, bridges, canals, docks, multistoried buildings, power plants, wharves, ports, reservoirs' embankments, tramways, irrigation improvements or any other structural or architectural work and the like.

The Authorised Share Capital of the Petitioner Company is Rs.2,50,00,000/- divided into 2,50,000 equity shares of Rs.100/- each. The issued, subscribed and paid-up share capital is Rs.25,00,000/- divided into 25,000 equity shares of Rs.100/- each.

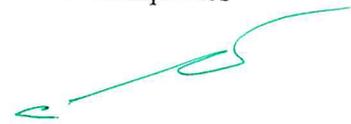
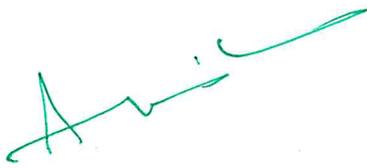
The Petitioner Company states that it had carried on business after its incorporation successfully and is conducting the meetings of Board of Directors as well as General Meetings regularly in compliance with the provisions of the Companies Act, 1956 as well as the Companies Act, 2013 whichever is in force at the relevant period. The Company has filed its returns up to the year 2014 and since the Directors thought that they can file the Financial Statements/Annual Accounts/Annual Reports as at 31.03.2015 and 31.03.2016 and Annual Returns for the financial years 2015 and 2016 with additional fee as stipulated under

Sections 92 and 137 read with Section 403 of the Companies Act, 2013. The said delay was not deliberate or intentional. It is only when the Petitioner Company tried to file Annual Returns for the financial years 2014-15 and 2015-16, the ROC website/portal was not allowing the applicant to upload the said documents with a remark 'Strike Off'.

The Petitioner Company further submits that it has earned substantial revenue from operations i.e., Rs.2,42,91,670/- for the year 2014-2015 and Rs.2,74,21,114/- for the year 2015-2016 respectively. The Petitioner Company also submits that the Company has held its Annual General Meetings for the financial years ended 31st March 2015 and 31st March 2016 on 29th September 2015 and 30th September 2016 respectively. The Company submits that it is also filing income tax returns regularly. It is further submitted that the Company's business which was progressing well during the financial year 2017-2018 has been stalled because of the strike off and that the stakeholders including employees, customers and suppliers will be adversely affected if the name of the company is not restored to the Register of Companies.

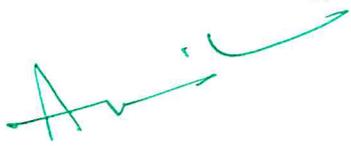
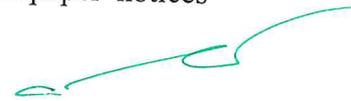
The Registrar of Companies has filed Counter affidavit dated 16th January, 2018 along with the Annexures. The Registrar of Companies herein denies all the averments made in the Petition save the averments which are specially admitted herein below and submit his counter to the Petition as under:

- i.) The Petitioner Company is a private limited company incorporated on 14.03.2012 vide **CIN No.U45202KA2012PTC063046**. The Registered Office of the Petitioner Company is situated at Nos.6 & 7, Anugraha Layout, B.Narayanapura, Off P.W.D. Road, Mahadevapura, Bengaluru – 560 016. 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 2014-15 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 16th March, 2017 was sent to the Company. The copy of the said notice is produced as **Annexure-II**. Further STK-1 notice dated 31.03.2017 was sent to Mr. Brahmaiah Tanneeru and Mr. Gadiraju Vasu, Directors of the company to the address available in the MCA 21 portal. The copies of the said notices are shown as **Annexures III & IV** respectively.

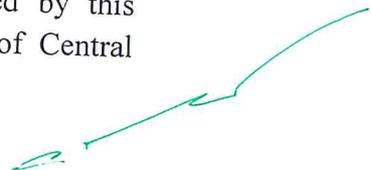
- iii.) In the said notice STK-1 that was sent to the company and the directors of the company, it was mentioned that the petitioner company was not carrying on business or operation for a period of two immediately preceding financial years and that the company has not applied u/s 455 of the Act and that the respondent proposes to strike off the name of the company from the Register of company as per Sec 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.
- 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 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.
- v.) 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 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 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.) It is stated in the petition that the applicant company came to know about the issue of public notice by ROC in form STK-5 and Form STK-7 only when it was trying to file the Annual Accounts as well as Annual Returns pertaining to the years 2014-15 and 2015-2016 during the month of September 2017 and that the portal of MCA was not allowing the company to file the returns. The Company has not filed the Balance Sheet and the Annual Report for the financial year 31.03.2015 and 31.03.2016. The petitioner has however enclosed the copies of the Balance Sheet of the year 2015-2016 in page Nos.54-93 of the Company petition.
- vii.) There is no prosecution, inspection, technical scrutiny and complaint 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 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 costs as decided by this Hon'ble Tribunal to be paid to the account of Central





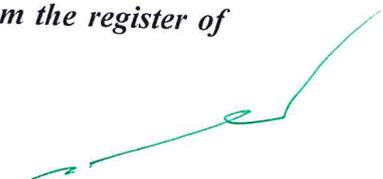
Government favouring the Pay and Accounts Officer, Ministry of Corporate Affairs, Southern Region, Chennai, towards the expenses incurred by the Respondent in taking Section 248 action, like postage, stationary, advertisement charges etc.

- 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 2014-2015, as mandatorily required under the Act. It is stated in the petition that the applicant company was a non-functional company at the time of strike off and that it wants the company to be revived only for the purpose of winding up of the company.

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 ongoing through the provisions of Section 252(3) of the Companies Act, 2013, this Tribunal is of the view that the Petitioner Company is in the construction business and submits that it has earned substantial revenue from operations i.e., Rs.2,42,91,670/- for the year 2014-2015 and Rs.2,74,21,114/- for the year 2015-2016 respectively. The Petitioner Company also submits that the Company has held its Annual General Meetings for the financial years ended 31st March 2015 and 31st March 2016 on 29th September 2015 and 30th September 2016 respectively. Since it is a construction company there can be no sales and revenue every year and it depends on the execution and completion of the projects and marketing of the construction which will generate revenue and the gestation period is long in the special nature of the business.

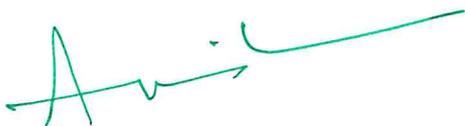
The Petitioner Company has also given an undertaking that it has not deposited any extra money during the demonitisation period and that necessary steps will be taken to file the Annual Return and Financial Statements after restoration of the name of the Company to the Register of Companies.

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 2014-2015 to 2015-2016 and the subsequent year in prescribed format as required under the Companies Act, 2013 be filed with the Registrar of Companies,

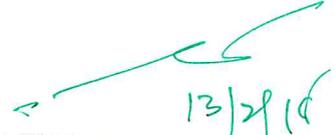
The Petitioner Company is directed to pay Rs.50,000/- as cost to the account of Central Government in favour of the Pay & Accounts Officer, Ministry of Corporate Affairs, Southern Region, Chennai and D.D. drawn to be handed over to Registrar of Companies, Karnataka Bangalore.

The Registrar of Companies, Karnataka is further directed to restore the name of the Petitioner company i.e. SPARROW 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

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