

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

C.P.No.163/BB/2017
Under Section 252(3) of the Companies Act, 2013
Order delivered on: **15th February 2018**

**IN THE MATTER OF
M/S SMR TELECOM HOLDINGS PRIVATE LIMITED**

Mr.C. Shiva Kumar Reddy
S/o Veera Reddy Chenna Reddy
No.14, 29th Main BTM Layout
2nd Stage, Bengaluru – 560 078, KA, IN
Director and shareholder of
M/s SMR Telecom Holdings Private Limited .. PETITIONER

Versus

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): Ms. Varsha V.Shenoy for VVS & Associates
Practicing Company Secretary
S-1, Sai Krupa Vestaa, 117
Halanayakanahalli, Sarjapur Road
Bengaluru – 560 035

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

Heard on: 03.11.2017, 28.11.2017, 18.12.2017, 21.12.2017, 22.01.2018,
24.01.2018, 07.02.2018

ORDER

The Petitioner Company SMR Telecom Holdings Private Limited represented by its shareholder 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 deems fit in the circumstances of the case.

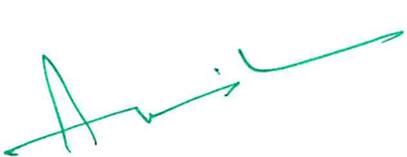
The averments made in the Company Petition are briefly described hereunder:-

The Petitioner Company was originally incorporated on 10th December 2002 under the name and style of "SMR Telecom Holdings Private Limited" with the Registrar of the Companies, Karnataka and obtained Certificate of Incorporation vide CIN No. **U05190KA2002PTC031335**.

The Registered Office of the Petitioner Company is situated at No.14, 29th Main, BTM Layout 2nd Stage, Bengaluru – 560 078, Karnataka, India.

The main object of the Petitioner Company is (1) To carry on the business as manufacturers, producers, designers, traders, dealers, importers, exporters, services, reconditioners, consultants, distributors and value added resellers for professional grade microwave components like duplex filters, low pass, High pass, Band pass, Band reject, Harmonic Reject filters, Isolators/Circulators, Power splitters/Combiners, Low noise Amplifiers, 50 HM Terminators, Fixed Attenuators, Directional Couplers, Transmitter Combiners, RX Multi Couplers, Handled Radios, Battery packs, Connectors and Antennae, in a RF and Microwave frequency ranges. (2) To carry on the business of manufacturers, installation, operation and maintenance of public and private telecommunication networks, local exchange networks and works connected therewith, transmission systems, switching for telecommunications, providers of various services as cable TV, cable telecommunication, audio and video tests, telecommunication switching equipments, components, such assembles and spares thereof, all kinds of transmission equipments, components and spares thereof.

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



Share Capital is Rs 63,26,530/- divided into 632653 Equity Shares of Rs 10/- each.

It is averred in the Company Petition that, the Company has revenue from its operation for the years 2014-15 to 2015-16. It is also reflected in the Company Petition, that the Company is owning Tangible Assets and Current Assets as given below in respect of financial year 2015-2016.

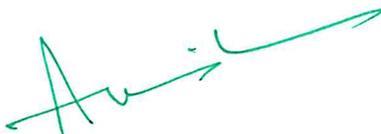
Tangible Assets		Rs.41,243,834
Current Assets		
Inventories	Rs. 65,770	
Cash and bank balances	Rs. 698,586	
Short term loans & advances	Rs.230,218,978	
Other Current Assets	Rs. 12,108,199	Rs.243,087,533

Similarly Revenue from operations is as follows for the financial year 2015-2016:

Revenue from operations	Rs.3,507,240
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The Practicing Company Secretary has submitted that, the Company has received a notice from the Registrar of Companies, Karnataka, Bengaluru on 16th March 2017 stating that, the Company has not been carrying on any business or operation for a period of two immediately preceding financial year and have not made any application within such period for obtaining the status of dormant company. The Practicing Company Secretary also informed that, the Company is doing business on a going concern basis and due to some managerial issue was not able to upload the Balance Sheets and Annual Returns for the preceding 2 financial years, showing that Company is doing its business on going concern basis.

It is further averred that, the Petitioner Company has been carrying on business not only on going concern basis, but also duly filed Income tax returns for the assessment year 2015-16 and 2016-17. The Practicing Company Secretary



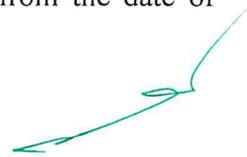

has further stated that the company is also having some employees, who will be directly affected.

The Practicing Company Secretary has also stated that, the Appellant has filed this petition within the limit laid down under section 252 of the Companies Act, 2013.

The Registrar of Companies, Karnataka, Bengaluru has filed Counter Affidavit dated 17th January 2018 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 that:

- 1) 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 2014-15 to 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 16/03/2017 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 both the 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**.
- 2) 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 Companies Act, 2013 unless a cause is shown to the contrary with 30 days from the date of receipt of the STK-1 notices.



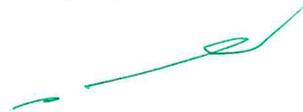
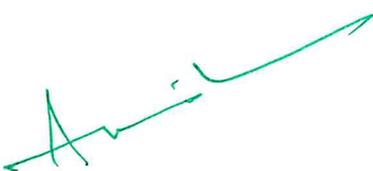
- 3) It is submitted that a consolidated notice in STK-5 in English and Hindi was released as per Rule 7 of the Companies (Removal of name of Companies from the Register of Companies) Rule, 2016, in the Official website of the Ministry of Corporate Affairs on 28.04.2017 and in the official Gazette on 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- IV, V & VI respectively.**
- 4) 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 Return was filed by the Petitioner company till 20.06.2017 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 -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 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-VIII.**
- 5) It is stated in the petition that the applicant company is doing its business on a going concern basis and the Petitioner Company has failed to file the Financial Statement for the years 2014-15 to 2015-16 due to lack of fund availability and unfavourable market force as the company could not grow its business. 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. It is not known how the said notices were not replied by the Company and its Directors.

- 6) 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 a cost as decided by this Hon'ble Tribunal to be paid to the account of Central Government by way of a demand draft 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 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, the Petitioner Company has committed a default in not filing the Statutory Returns for the Financial Years 2014-15 to till 2015-16 before the Respondent i.e. Registrar of Companies. The Petitioner Company was carrying on the business in the said default period and the Petitioner Company has also filed



the Audited Balance Sheet for the Period between 2014-15 to 2015-16 along with this Petition to show its bona fide of carrying on the Business.

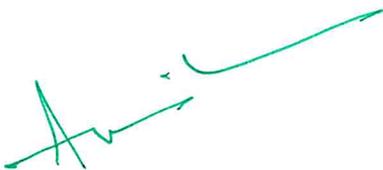
Section 252(3) stipulates that “if a company, or any member or creditor or workman thereof feels aggrieved by the company having its name struck off from the Register of Companies, the Tribunal on an application made by the company, member, creditor or workman before the expiry of twenty years from the publication in the Official Gazette of the notice under sub-section (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.”

We have heard the Practicing Company Secretary for the Petitioner Company, who contended that, the company is doing its business on a going concern basis was not able to upload the balance sheet and annual returns for the preceding (2) two financial years and further contended that, the company has taken necessary initiative measures to improve the business in the coming years and prayed the Tribunal to revive this Company

After hearing the Practicing Company Secretary 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, name of the Company to be restored in the Register of Companies as maintained by Registrar of Companies.

THIS TRIBUNAL DO FURTHER ORDER:

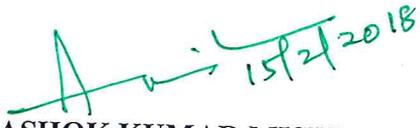
The Petitioner Company shall within 30 (thirty) days of the date of the receipt of this order cause a certified copy of this Order along with the copies of

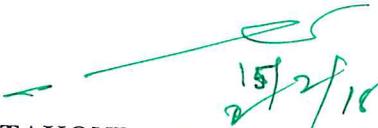


Audited Balance Sheet and all other Statutory filings for the period upto 2015-16 in the prescribed format as required under the Companies Act, 2013 be filed with the Registrar of Companies, Karnataka, Bengaluru

The Petitioner Company is also directed that, the revival order will be temporarily vacated if the above compliances are not made within the minimum period of 30 days from the date of receipt of this order by the Petitioner Company. 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 Bengaluru.

The Registrar of Companies, Karnataka is further directed to restore the name of the Petitioner Company i.e. SMR Telecom Holdings Private Limited in the Register of Companies within a period of 15 days from the date of this order, after accepting the Audited Balance sheets and related financial statements and other Statutory Returns after charging additional fee as may be applicable as required under the Companies Act, 2013.


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL


(RATAKONDA MURALI)
MEMBER, JUDICIAL