

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

C.P.NO.191/BB/2017
Under Section 252(3) of Companies Act, 2013
Order delivered on 15th February 2018

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

IN THE MATTER OF

M/S SAHNI KRISHNA PROMOTERS AND DEVELOPERS PRIVATE LIMITED

Vs

REGISTRAR OF COMPANIES, KARNATAKA

Sahni Krishna Promoters and Developers
Private Limited
261, Sri Krishna, 4th Cross
RMV Extension, II Stage, II Block
Bengaluru -- 560 094

.. Petitioner

Vs

REGISTRAR OF COMPANIES, KARNATAKA

'E' Wing, 2nd Floor, KendriyaSadana,
Kormangala, Bangalore-560034.

.. Respondent

For the Petitioner (s): Sri P.S.M. Chari, PCS

For the Respondent (s):

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

Heard on: 16.11.2017, 30.11.2017, 21.12.2017, 15.01.2018, 29.01.2018

ORDER

The Petitioner Company Sahni Krishna Promoters and Developers 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 19th August 1995 in the State of Karnataka vide **CIN No.U45201KA1995PTC018612**. The Registered Office of the Petitioner Company is situated at No. 261, Sri Krishna, 4th Cross, RMV Extension, II Stage, II Block, Bengaluru – 560 094.

The main object of the Petitioner Company is (1) To carry on all or any of the business of promoters, developers, builders of layouts, houses, villas, bungalows, cottages, condominiums, residential apartments and flats of all types and description by acquisition of land, sites, building or any other civil structure by purchase, lease or otherwise for sale, lease or transfer or disposal in any other manner to Non-Residential Indians and/or others. (2) To carry on all or any of the business of owners, lessors, lessees, managers, licensors, licensees of shops, shopping centres, business centres, guest houses, hotels, motels, inns, resorts on time share basis or otherwise, restaurants, clubs and centres for sports, health, amusement, entertainment and/or pleasure, hospital and suppliers of various services required for the above.

The Authorised Share Capital of the Petitioner Company is Rs.30,00,00,000/- divided into 3,00,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital is Rs.16,60,02,000/- divided into 1,66,00,200 equity shares of Rs.100/- each.

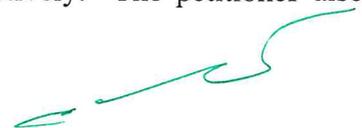
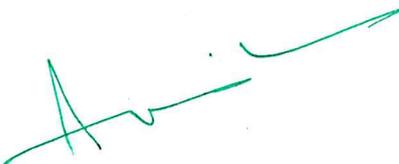
The Petitioner Company states that it had entered into a Joint Development Agreement on 8th March 2017 with M/s Vaishnavi Anushka Infrastructure, a limited liability partnership incorporated under the provisions of Limited Liability Partnership Act, 2008 and having its registered office at No.2/2, Off Vittal Mallya Road, Walton Road, Bengaluru – 560

001 and in connection with the said development project land measuring 10 acres 33 guntas situated in Survey Nos.21 and 22 of Ananthapura Village, Yelahanka Hobli, Bengaluru North Taluk was acquired for the purpose of construction of residential buildings. This execution of joint development, the PCS for the Petitioner Company submits that the petitioner intends to carry on its business. The Company has filed its returns up to the year 2013-2014. The Petitioner Company had also prepared the financial statements up to the financial year 2015-2016 and the said financial statements were audited by M/s Natraj Associates, Chartered Accountants and Statutory Auditors of the Company. However, due to heavy work schedule of the said Auditors and due to inadvertence the financial statements for the years 2014-2015 and 2015-2016 could not be filed with the ROC. It is reiterated that the said non-filing of returns of unintentional and not deliberate and the said financial statements are ready to be filed and are enclosed as Annexure-11 to this petition.

It is further submitted that the Petitioner Company received a Show Cause Notice u/s 248(1) of the Companies Act, 2013 from the ROC, Karnataka calling for reasons for not having filed the financial statements for the financial years 2014-2015 to 2015-2016 and due to preoccupation with work the urgency to reply to the said notice was lost site of and the said notice was replied to within 30 days from the date of receipt of the notice. Consequently the name of the Petitioner Company was struck off on the presumption that the Petitioner Company is not carrying on its business.

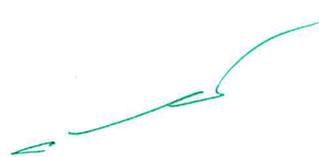
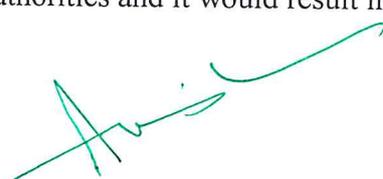
The Petitioner Company has also filed an affidavit with a statement explaining the reasons for the delay in commencement of operations and synopsis of additional facts of the case. In the said statement, it is stated that after its incorporation i.e., on 23rd August 1995, the Petitioner Company could acquire land measuring 10 acres 33 guntas in Ananthapura Village, Yelahanka Hobli, Bengaluru North Taluk only on 21st March 2013. The copy of the registered sale deeds dated 21st March 2013 is annexed to the petition. These lands were

initially acquired by one of the Promoters of the Company during 1997 and later on sold to the Company in consideration of allotment of equity shares. The said lands were agricultural lands and they were converted into non-agricultural lands during 1999 and 2010 and completion of the legal formalities for conversion of the said lands took enormous time. The Petitioner Company had entered into a Joint Development Agreement and MOU with M/s RMZ Corporation, Bengaluru, which agreement did not materialise due to some disagreement and the amount advanced by the said RMZ Corporation was refunded with interest @ 18% p.a. During May 2014, Mr. Balakrishnan Ramaswamy, Managing Director of the Company who was entrusted with the responsibility of the initial developmental work of the lands was seriously ill and therefore the start up of the project got delayed. Finally, in March 2017, the Petitioner Company could enter into a Joint Development Agreement with M/s Vaishnavi Anushka Infrastructure LLP, on 8th March 2017 and a copy of the said agreement is enclosed to the petition as Annexure-A8. After this agreement things started progressing and also the Bangalore Development Authority has sanctioned the Developmental Plan and site work has commenced. It is proposed to obtain sanction from the BBMP (Bruhat Bengaluru Mahanagara Palike) for construction of high-rise high-end quality 2 and 3 bedroom apartments in the lands that are being developed by the said developers. It is submitted that contracts for labour and architecture have also been executed. It is submitted that the project is yet to become fully operational for the above stated reasons and consequently there is no turnover during these years. The value of the land and initial expenditure incurred thereon have been disclosed under the head 'Inventories' in the Balance Sheet as on 31.03.2017, a copy of which is enclosed to the memo dated 21.12.2017. Similarly, in the Balance Sheets as on 31.03.2015 and as on 31.03.2016 suitable disclosure has been made under 'Other Current Assets'. A copy of the said Balance Sheets have been produced at page Nos.62 and 77 of the original petition respectively. The petitioner also



submits that the gestation period for the real estate/construction business is normally longer in comparison to other companies.

The Petitioner Company further submits that the proposed project involves huge money and is at a crucial stage of operation and any delay in the restoration of the name of the Petitioner Company would result in enormous loss and would affect the business of the Petitioner Company in the days to come. In terms of clause 23.1 of the Joint Development Agreement, in the event of breach of contract the Petitioner Company will be saddled with huge costs and losses and therefore it is incumbent on the Petitioner Company to facilitate the Developer to complete the project in terms of the Joint Development Agreement. It is further submitted that after incorporation, the Financial Statements and Annual Returns for the years 1995-1996 to 1999-2000 were filed regularly. For the years 2000-2001 to 2011-2012, the Financial Statements were filed only during 2012-2013 by availing the Company Law Settlement Schemes announced by the Ministry of Corporate Affairs. During the said period, the status of the Company was changed as dormant and after filing Form 61, the status was restored as active and consequently forms up to 2011-12 were filed by the Company. The Company submits that Annual Returns for the years 2012-13 and 2013-2014 have been filed and necessary action has been taken to appoint the Managing Director and new Directors, increasing the authorised share capital to Rs.30 crores and the paid up capital to Rs.16.60 crores and etc. The Petitioner Company in support of the above submissions has produced the Joint Development Agreement, at page No.87, copy of the Income Tax Return acknowledge for the assessment years 2015-2016 and 2016-2017, at page Nos.52 to 57, certificate issued by the Statutory Auditors at page No.58 etc. Therefore the Petitioner Company prays for restoration of the name of the Company as the Company has incurred huge expenditure on the initial development and obtaining requisite approvals by various authorities and it would result in severe loss to the company.



The Registrar of Companies has filed Counter affidavit dated 17th 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 29.08.1995 vide **CIN No.U45201KA1995PTC018612**. The Registered Office of the Petitioner Company is situated at No.261, Shri Krishna, 4th Cross, RMV Extension, 2nd Stage, 2nd Block, Bengaluru – 560 0094. 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 14th 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. Balakrishnan Ramaswamy and Mr. Mysore Seshagiri Rao Mohan and Mrs. Radha Gopalkrishnan, 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 & V** 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–VI, VII, VIII & IX 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 –X.** 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-XI.**
- vi.) It is stated in the petition that the company has also prepared the Financial Statement up to the financial years 2014-2015 and 2015-2016 and that the Financial Statements were submitted to the said Statutory Auditors in order to file it with the ROC, but due to heavy work schedule of the Chartered Accountants and also due to

inattention the said Financial Statement of the years 2014-2015 and 2015-2016 could not be filed with the ROC.

- vii.) That there is no inquired, investigation and complaints 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.

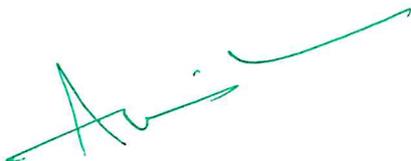
Section 252(3) stipulates that "if a company, or any member or creditor or workman thereof feels aggrieved by the company having its name struck off from the Register of Companies, the Tribunal on an application made by the company, member, creditor or workman before the expiry of twenty years from the 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 the gestation period is normally long in the special nature of the business. Further the Balance Sheet as at 31st March 2016 discloses that the Petitioner Company has Fixed Assets worth Rs.54,98,963/- and Current Assets comprising of short term loans and advances of Rs.22,60,260/- and other current assets of Rs.18,71,35,550/-. The Petitioner Company has also long term borrowing of Rs.5,90,34,022/- and current liabilities of Rs.61,962/-.

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, 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. SAHNI KRISHNA PROMOTERS AND DEVELOPERS 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