

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

C.P.NO.140/BB/2017

Under Section 252(3) of Companies Act, 2013

Order delivered on 16th 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 SOUDAL SEALANTS FOAMS AND ADHESIVES PRIVATE LIMITED

Vs

REGISTRAR OF COMPANIES, KARNATAKA

M/s Soudal Sealants Foams and
Adhesives Private Limited
87, 4th Floor, 22nd Main Road
BSK 2nd Stage, Bengaluru
Karnataka – 560 070

.. Petitioner

Vs

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

.. Respondent

For the Petitioner (s): Mr. B.Chandra, PCS

For the Respondent (s):

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

Heard on: 16.10.2017, 24.10.2017, 15.11.2017, 17.12.2017, 22.01.2018, 07.02.2018

ORDER

The Petitioner Company M/s Soudal Sealants Foams and Adhesives 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 31st December 2008 in the State of Karnataka vide **CIN No.U74900KA2008PTC048762** . The Registered Office of the Petitioner Company is situated at # 87, 4th Floor, 22nd Main Road, BSK 2nd Stage, Bengaluru, Karnataka – 560 070.

The main object of the Petitioner Company is to manufacture, import, purchase sealants, PU foams, adhesives and raw materials, semi finished goods and/or packaging materials required for production or filling of sealants, PU foams, adhesives and related products in the territory of India and related products for distribution in the Indian market and outside India.

The Petitioner Company is a subsidiary of M/s Soudal Holding NV Belgium. The pattern of the share capital of the company is produced as Annexure-A2.

The Authorised Share Capital of the Petitioner Company is Rs.10,00,000/- divided into 10,000 equity shares of Rs.100/- each. The issued, subscribed and paid-up share capital is Rs.3,07,700/- divided into 3,077 equity shares of Rs.100/- each.

The Petitioner Company states that it did not have any significant commercial activity since incorporation. Though there was not much activity in the Petitioner Company, the Petitioner Company was compliant with all filing requirements with the Registrar of Companies, Bengaluru till the financial year 2013-2014. When the Petitioner Company had initiated the process of complying with the filing requirements for the financial year 2014-2015, it came to their notice that the Registrar of Companies had already struck off the Petitioner Company's name from the Register.

The Petitioner Company submits that during the year 2009-2010, the Company received share application money from its holding Company M/s Soudal Holding NV Belgium to an extent of Rs.14.62 lakhs through authorised dealers as required under the Regulations framed by the Reserve Bank of India for issue/transfer of Securities to persons resident outside India. Though the Company is required to allot the shares within 180 days from the date of receipt of funds, the shares are not allotted and the same is pending allotments as per the financial statements of the Company till recently. A copy of the Balance Sheet as at 31.03.2016 is produced as Annexure-A3. It is further stated that the

funds which were received were either to be returned to the holding company or shares allotted after obtaining necessary approval from the Reserve Bank of India. Before any action could be taken by the Petitioner Company, the Registrar of Companies, Karnataka had issued a notice under Section 248(1) of the Companies Act, 2013 vide their letter dated 28.04.2017 that he intends to remove the name of the Company from the Register of Companies and had sought representation within 30 days of receiving the notice which is produced as Annexure-A4 to this petition.

The Practicing Company Secretary submits that the notice was not received by post and the email ID registered with the ROC was not functional and hence the Company could not request the Registrar to grant some more time for making the compliances. The Registrar of Companies, Karnataka as stated in his notice that he will proceed with the striking off of the name of the Company vide a common notice dated 17th July 2017 produced as Annexure-A5 and the master date in the MCA portal shows the Company as "Strike Off" which is produced as Annexure-A6.

The Practicing Company Secretary has also stated that, the Appellant has filed this petition within the limits 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 has filed Counter affidavit dated 25th 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 31.12.2008 vide **CIN No.U74900KA2008PTC048762**. The Registered Office of the Petitioner Company is situated at No.87, 4th Floor, 22nd Main Road, BSK 2nd Stage, Bengaluru – 560 070. 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 18th March, 2017 was sent to the Company with a copy of the same to Mr. Dirk Coorevits, Mr. Eduard Vloeberghen and Mr. Emmanuel Smedt, 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 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 petitioner company did not have any sufficient commercial activity since incorporation but is complying with respect to all filing requirements with the Registrar of Companies. The petitioner has also stated that they had initiated the process of filing the financial statements for the year 2014-2015, however by then the Registrar of Companies had already struck off the company's name from the Register.
- vii.) It is submitted that 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 his 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.

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 2014-15 and 2015-2016 before the Respondent i.e. Registrar of Companies. The Petitioner Company was not carrying on any business in the said default period and the Petitioner Company has also filed the Audited Balance Sheet for the Period between 2014-2015 to 2015-2016 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.”

The Practicing Company Secretary appearing for the Petitioner Company has cited the following decision in support of their contention:

- (i) Intec Corporation (P) Ltd. Vs. Registrar of Companies (N.C.T. of Delhi & Haryana) reported in (2017) 77 taxmann.com 213(Delhi).
- (ii) M.A. Panjwani Vs. Registrar of companies reported in (2014) 44 taxmann.com 89 (Delhi).

In the case of Intec Corporation (P) Ltd. Vs. Registrar of Companies, the issue whether the name of a company which has been struck off under the Fast Track Exit Scheme can be restored subsequently under Section 560(6) has been dealt with. The facts of both the cited cases of the Hon'ble Delhi High Court are different than in the present case.

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 did not have any significant commercial activity since incorporation by its own admission.

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 2014-15 to 2015-2016 i.e., for a period of two years. Copies of the balance sheets for the years 2014-2015 and 2015-2016 and income statement for the said period provided to this Bench by the petitioner reflect that the company is not active and there are no revenues from operation in the said periods; as such it is a fit case for strike off. Therefore, this petition is liable to be dismissed and accordingly it is dismissed.

(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL

(RATAKONDA MURALI)
MEMBER, JUDICIAL