

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

C.P.NO.156/BB/2017

Under Section 252(3) of Companies Act, 2013

Order delivered on 19th 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 SANWA TEC PRIVATE LIMITED

Vs

REGISTRAR OF COMPANIES, KARNATAKA

M/s SANWA TEC PRIVATE LIMITED

A company incorporated under the Companies Act, 1956

and having its registered office situated at:

MySugar Building, J.C.Road

Opposite Ravindra Kalakshetra

Bengaluru – 560 002

Karnataka

Represented by its Directors

Sri Anjan Ramchandra Salgame

Smt. Geetha Salgame

.. Petitioner

Vs

REGISTRAR OF COMPANIES, KARNATAKA

'E' Wing, 2nd Floor, KendriyaSadana,

Kormangala, Bangalore-560034.

.. Respondent

For the Petitioner (s): Mr. V.S.Arbatti, Advocate

For the Respondent (s):

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

Heard on: 02.11.2017, 17.11.2017, 08.12.2017, 21.12.2017, 19.01.2018, 07.02.2018

ORDER

The Petitioner Company M/s Sanwa Tec 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:

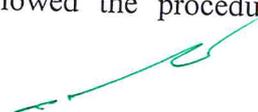
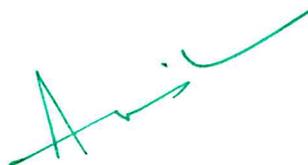
The Petitioner Company is a private limited company incorporated on 17th May 2011 in the State of Karnataka vide **CIN No.U29253KA2011PTC058685**. The Registered Office of the Petitioner Company is situated at MySugar Building, J.C.Road, Opposite Ravindra Kalakshetra, Bengaluru, Karnataka – 560 002.

The main object of the Petitioner Company is to manufacture, design, assemble, buy, sell, distribute, import, export, alter, re-model, hire, exchange, repair, service and otherwise deal in cutting tools, machinery, equipment of every kind and description components parts thereof, spare parts, accessories, tools, implements, materials thereof and products for cutting metals, stones, diamonds and to generally deal in all kinds of mechanical, electrical, hydraulic, engineering goods, plant and machinery, cutting tools and equipments.

The Authorised Share Capital of the Petitioner Company is Rs.3,00,00,000/- divided into 30,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital is Rs.5,00,000/- divided into 50000 equity shares of Rs.10/- each.

The Petitioner Company states that the Respondent struck off the Petitioner Company's name from the Register of Companies apparently, due to default in statutory compliances, viz., failure to file financial statements and annual returns for the period 2012-2013, 2013-2014, 2014-2015 and 2015-2016 and the Respondent has initiated proceedings under Section 248 of the Companies Act, 2013 for the purpose of striking off the name of the Petitioner Company from the Register of Companies maintained by the Respondent.

The learned counsel for the Petitioner Company submits that the Petitioner Company is unaware of the proceedings under Section 248 of the Companies Act, 2013 initiated by the Respondent for striking off the name of the company from the Register maintained by the Respondent. He further submits that the Respondent has not followed the procedure



prescribed under Section 248(1) of the Companies Act, 2013 in as much as no notice was issued under Section 248(1) and has now proceeded to issue notice under Section 248(5) publishing the name of the Petitioner Company in the Official Gazette on 17.07.2017. A copy of the said notification issued under Section 248(5) of the Companies Act, 2013 is produced with this petition as Annexure-2 and the webshot of MCA website is produced as Annexure-3.

The learned counsel for the Petitioner Company submitted that the management of the Company remained involved in carrying on its business and all its assets are intact and it never became defunct. The Petitioner Company has been active since incorporation and has also been maintaining all the requisite documentation as required under the Act. The learned counsel for the Petitioner Company further submits that neither the Petitioner nor its Directors were served any notice, nor were they afforded an opportunity of being heard before the aforesaid action was taken by the Respondent and in view of the above, there is failure in following the principles of natural justice by the Respondent. He also submits that this petition is filed within the limitation period and under section 252(3) of the Companies Act, 2013 i.e., 20 years.

It is further submitted that the Petitioner Company had engaged the services of a firm of accounting professional for the purpose of preparing and maintaining the accounts for the purpose of audit as well as maintaining, managing and supervising the statutory compliances in terms of financial statements and annual returns. It is submitted that one of the employees in-charge of the work relating to the Petitioner Company left the employment and by oversight the compliance work relating to the Petitioner Company was not completed. In view of the change in the management of the Petitioner Company, even the Petitioner Company could not follow up the same. In fact it was only in 2016-2017 when the Balance Sheet as at 31.03.2017 and the Auditor's Report in respect thereof was ready to be filed with the Respondent that it came to the notice of the Petitioner Company that its name had been struck off from the Register of Companies maintained by the Respondent.

Learned counsel for the Petitioner Company submits that the salutary object of Section 252(3) of the Companies Act, 2013 is to give a chance to the companies such as the Petitioner to revive the company which has been struck off by the Registrar of Companies within a period of 20 years and to give them an opportunity of carrying on the business only after this Tribunal is satisfied that such restoration is necessary in the interest of justice.



The learned counsel for the Petitioner Company further submits that in the event of revival of the Company and restoration of the name of the Petitioner Company, it shall file all outstanding statutory documents for the period from 2012-13 to 2016-2017 along with filing fees and additional fees as applicable. Copies of the statutory documents for the years 2012-2013 to 2016-2017 are collectively produced as Annexure-4 to the petition.

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 17.05.2011 vide **CIN No.U29253KA2011PTCO58685**. The Registered Office of the Petitioner Company is situated at MySugar Building, Opposite Ravindra Kalakshetra, J.C.Road, Bengaluru – 560 002. 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 31.03.2012 to 31.03.2016. 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 22nd March, 2017 was sent to Mr.Anjan Ramchandran Salgame and Mrs. Geetha Salgame, Directors of the company to the address available in the MCA 21 portal. The copies of the said notices sent to the Directors are produced and marked as **Annexure-II**.
- 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 4 immediately preceding financial years 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-III, V, VI, & VII 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 -VIII.** 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 the publication made in the Official Gazette on 29.07.2017 is shown as **Annexure-IX.**
- vi.) It is submitted that there is no prosecution, inspection, technical scrutiny and complaint pending against this company.
- vii.) That the Petitioner has claimed in the petition that the company was carrying on the business at the time of strike off but as per the Balance Sheets that are annexed with the petition, the company is an inactive company. Therefore it was a fit case for strike off. If the

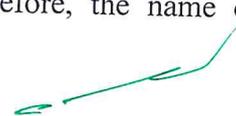
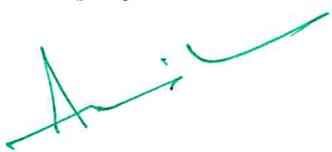
company is allowed to be revived then the Government's crackdown on shell/dormant companies will be jeopardised. Though the petitioner has prayed that the name of the company be restored to the register of companies, the respondent prays that the petition may be dismissed as not a fit case for revival u/s 252(3) of the Act.

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 default in not filing the Statutory Returns for the Financial Years 2012-13 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. The Audited Balance Sheet for the Period between 2012-2013 to 2016-2017 produced along with this Petition does not show any revenues or assets to show that the Petitioner Company is bona fide 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."

After hearing the learned counsel 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 not functioning as a going concern and therefore, the name of the



Company does not deserve to be restored in the Register of Companies as maintained by the Registrar of Companies.

In the light of the discussion made above, this petition is liable to be dismissed and accordingly dismissed.


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL


(RATAKONDA MURALI)
MEMBER, JUDICIAL

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