

IN THE NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH

C.P.NO.193/BB/2017

Under Section 252(3) of Companies Act, 2013

Order delivered on 20<sup>th</sup> February, 2018

IN THE MATTER OF

M/s. NAVACHETHAN RETIREMENT RESIDENCY PRIVATE LIMITED

M/s. Navachethan Retirement Residency Private Limited  
No. 47, 38<sup>th</sup> Main, 6<sup>th</sup> Cross, BTM 2<sup>nd</sup> Stage  
Bengaluru 560 068

... Petitioner

Vs.

Registrar of Companies, Karnataka  
'E' Wing, 2<sup>nd</sup> Floor, Kendriya Sadan, Kormangala  
Bengaluru 560 034

... Respondent

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

For the Petitioner (s): Mr. Saji P. John, Advocate  
M/s. SPJ Legal  
Unit No.1002, 10<sup>th</sup> Floor  
#30, Prestige Meridian II, MG Road  
Bangalore 560 001

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

Heard on : 16.11.2017, 30.11.2017, 20.12.2018, 12.01.2018, 29.01.2018, 30.01.2018  
and 08.02.2018

ORDER

The Petitioner Company M/s. Navachethan Retirement Residency 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 Registrar of Companies.

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

1. The Petitioner Company **M/s. Navachethan Retirement Residency Private Limited** was incorporated with the Office of the Registrar of Companies, Karnataka on 18<sup>th</sup> June, 2012 bearing CIN: **U45200KA2012PTC064418**, under the provisions of the Companies Act, 1956 as a Private Limited Company, with its **Registered Office at No. 47, 38<sup>th</sup> Main, 6<sup>th</sup> Cross, BTM 2<sup>nd</sup> Stage, Bangalore 560 068**. Copy of the Memorandum of Association is enclosed and marked as **Annexure-A**.
2. The Authorised Share Capital of the Company is Rs. 1,00,000/- divided into 10,000 Equity Shares of Rs. 10/- each and Issued, Subscribed and Paid-up Share Capital is Rs. 1,00,000/- divided into 10,000 Equity Shares of Rs. 10/- each.
3. The main objects of the Company are set out in the clause III (A) in the Memorandum of Association of the Company, are as under:
  - a. To carry on the business of developing and construction of residential units to senior citizens and to carry on in India or abroad the business as infrastructure developers, builders, executors, contractors of construction of building, entertainment centre, mansions, house, apartment and to build layout, develop, construct, build, erect, demolish, re-erect, alter, repair buildings, flats, houses, resorts, or otherwise deal in all kinds of property houses, structures or other land and property.
4. That the Registrar of Companies, Karnataka has published the notice in Form No.STK-7, pursuant to sub-section (5) of section 248 of the Companies Act, 2013, the name of the applicant Company has been struck off from the Register of Companies and declared the Company is

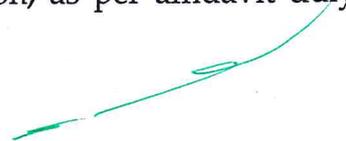
dissolved as on 17<sup>th</sup> July, 2017. A copy of the notice in Form No. STK-5 is enclosed and marked as **Annexure-B**.

5. That the Petitioner Company has not carried any commercial activity since its Incorporation due to non-viability of projects.
6. That as per section 248 of the Companies Act, 2013, where the Registrar has reasonable cause to believe that (a) a Company has failed to commence its business within one year of its incorporation or (c) a Company is not carrying on any business or operation for a period of two immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant Company under section 455, he shall send a notice to the Company and all the Directors of the Company, of his intention to remove the name of the Company from the Register of Companies and requesting them to send their representations along with copies of the relevant documents, if any, within a period of thirty days from the date of the notice.
7. That accordingly, ROC has sent notice to the Company in Form STK-1 during March 2017 for removal of the name of the Company from ROC and also mentioned the name of the Company in public notice in Form STK-5 on 04.04.2017, pursuant to sub section (1) and sub section (4) of section 248 of the Companies Act, 2013 and rule 7 of the Companies (Removal of names of Companies from the Register of Companies) Rules, 2016. A copy of the notice is enclosed and marked as **Annexure-D**.
8. The Petitioner Company has further averred that inadvertently the Company has not furnished any representation along with the copies of the relevant documents/objections to that notices. Accordingly, ROC has published the name of the Company in the Official Gazette on 17<sup>th</sup> July, 2017 and declared the Company has been struck off and dissolved. A copy of the Gazette Notification is enclosed and marked as **Annexure-C**.
9. That the Company wishes to undertake the projects/business activity during the forthcoming years. As per sub section (3) of section 252 of the Companies Act, 2013, 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.

10. That the Petitioner Company has filed this application before the Hon'ble National Company Law Tribunal, Bengaluru Bench, for restoration of the name of the Company in the Registrar of Companies, Karnataka.
11. That the Petitioner Company further declares that the limitation is within the limitation as prescribed in the provision of section 252 read with section 433 of the Companies Act, 2013.
12. That the Petitioner Company has averred that pursuant to incorporation, the applicant was in the process of identification of suitable land for developing layout project for retired people, and the Company was in the final stage for commencing the above project and it was noticed that the applicant came to be struck off. Hence, this Hon'ble Tribunal may be pleased to restore the name of the Applicant Company to enable the Company to implement the project.

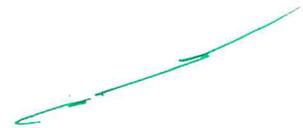
The Directors/Members of the Petitioner Company has also confirmed that no abnormal amount has been deposited into the Company's Account during demonetization period i.e. September 2016 to January 2017 and that no income tax notice has been served on the Company in this connection, as per affidavit duly notarized dated 28.11.2017.



The Directors/Members of the Petitioner Company has also filed an affidavit duly notarized dated 28.11.2017 undertaking to file all the overdue returns such as Balance Sheet, Financial Statements and Annual Returns till the financial year ended 31.03.2017, with Ministry of Corporate Affairs immediately within 30 days upon restoration of the name of the Company by the Hon'ble National Company Law Tribunal, Bengaluru Bench.

The Registrar of Companies has filed counter affidavit dated 29<sup>th</sup> January, 2018 along with annexures. The ROC 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:

1. The subject Company is registered with Registrar of Companies on 18.06.2012 with CIN: U45200KA2012PTC064418 and as per the records of the Company in MCA 21 Portal, the Registered Office at No. 47, 38<sup>th</sup> Main, 6<sup>th</sup> Cross, BTM 2<sup>nd</sup> Stage, Bangalore South, Bangalore 560 068. Copy of the Company Master Data is produced and marked as **Annexure-I**.
2. It is submitted that on verification of the of 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 Company has not filed either the Balance Sheet or the Annual Returns since from the period of incorporation of the Company i.e. 18.06.2012 till 2015-16. Therefore, the Respondent had reasonable cause to believe that the 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 31.03.2017 was sent to Mr. Shama Bhat and Mrs. Susheela Shama Bhat, 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 and IV** respectively;



3. In the said notice STK-1 that was sent to the Company and to the Directors of the Company, it was mentioned that interalia the Company is not carrying on any business or operation for a period of two or three immediately preceding financial years nor has made any application 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 Section 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;
4. 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 Vijaya Karnataka (Kannada Edition) and in English in the Times of India on 13.05.2017, 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 Vijaya Karnataka and the Times of India are produced and marked as **Annexure-V, VI, VII and VIII** respectively.
5. 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 Returns was filed by the Company till 21.06.2017 the day on which the list of defaulting Companies were crystallized, the Respondent proceeded to strike off the name of the 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 produced and marked 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 Company have been struck off the Register of Companies as



per Section 248(5) of the Act. A copy of the publication made in the official Gazette on 29.07.2017 is produced and marked as **Annexure-X**.

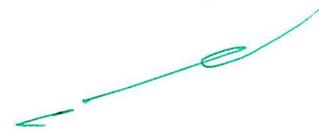
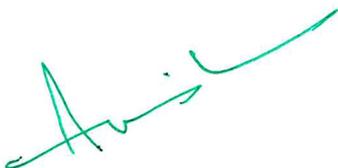
6. The Company cites that they have not carried any commercial activity since its incorporation due to non-viability of projects and also not filed its Annual Return and Financial Statements and wishes to undertake the projects/business activity during the fourth coming years. The Company has not filled the Balance Sheet and the Annual Report from the date of incorporation i.e. 18.06.2012 to till 2015-16 i.e. since the inception of the Company. 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. The Petitioner has however enclosed the copies of the Balance Sheet of the year 2013-14 to 2015-16 in page No.40 of the Company petition herein.
7. There is no prosecution, inspection, technical scrutiny and complaint pending against this Company.
8. The Petitioner has prayed that the name of the 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 up to 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 the 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 demand draft favouring the Pay & Accounts Officer, Ministry of Corporate Affairs, Southern Region, Chennai, towards the expenses incurred by the Respondent under Section 248 like postage, stationery, 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 Petition.

The Counsel for the Petitioner stated that the Petitioner Company was in the process of identification of suitable land for developing layout project for retired people and the Company was in the final stage for commencing the above project and during the period it was noticed that the Petitioner Company's name has been struck off. The Petitioner Counsel also confirmed that they have not received any Income Tax notice till date as also that they have not deposited any abnormal amount in the Bank during the demonetisation period. Further, the Counsel stated that the Company will file all overdue return till the financial year 31.03.2017 with the designated authority of Ministry of Corporate Affairs immediately on the restoration of the name of the Company by the Tribunal. The Registrar of Companies has left over his option on the Tribunal to revive the Company and on revival, the Petitioner will be directed to certain specified compliances. Apparently looking at the Balance Sheet as at 31.03.2017, it reflects that the Company has certain non-current assets and current assets. The Company has also incurred certain expenses on pre-operative expenditure. Considering the above aspects in view, as also the ROC report, it is just that the name of the Company needs to be restored to the Register of Companies and the Company is directed to file all the Balance Sheets and Annual Returns from 2012-13 to 2015-16.

Section 252 of the Companies Act, 2013 reads as under:

**Section 252 (1)** Any person aggrieved by an order of the Registrar, notifying a Company as dissolved under section 248, may file an appeal to the Tribunal within a period of three years from the date of the order of the Registrar and if the Tribunal is of the opinion that the removal of the name of the Company from the register of companies is not justified in view of the absence of any of the grounds on which the



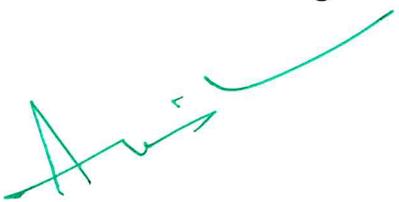
order was passed by the Registrar it may order restoration of the name of the Company in the register of companies.

**Provided** that before passing any order under this section, the Tribunal shall give a reasonable opportunity of making representations and of being heard to the Registrar, the Company and all the persons concerned.

Provided further that if the Registrar is satisfied, that the name of the Company has been struck off from the register of companies either inadvertently or on the basis of incorrect information furnished by the Company or its directors which requires restoration in the register of companies, he may within a period of three years from the date of passing of the order dissolving the company under section 248, file an application before the Tribunal seeking restoration of name of such company.

(2) A copy of the order passed by the Tribunal shall be filed by the Company with the Registrar within thirty days from the date of the order and on receipt of the order, the Registrar shall cause the name of the company to be restored in the register of companies and shall issue a fresh certificate of incorporation.

(3) 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.



**HENCE THIS TRIBUNAL DO FURTHER ORDER UNDER SECTION 252**

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 2012-13 to 2015-16 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 also directed that revival order will be temporarily vacated if the above compliances are not made within a period of 30 days from the date of receipt of this order by the Petitioner Company. The Petitioner Company is directed to pay Rs. 1,00,000/- 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. **M/s. NAVACHETHAN RETIREMENT RESIDENCY 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