

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

C.P.No.220/2017

Under Section 252(3) of the Companies Act, 2013

Order delivered on: **22nd February 2018**

Coram: Hon'ble Shri Ratakonda Murali, Member (Judicial)

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

**IN THE MATTER OF
VIVIDHA FOODS AND DELICACIES PRIVATE LIMITED**

Vividha Foods and Delicacies Private Limited

1, Sindoor, 2nd Main, 3rd Cross,

Ashrama Colony, RMV 2nd Stage,

Sanjayanagar,

Bangalore-560094 -

PETITIONER

Versus

Registrar of Companies

2nd Floor, E-Wing, Kendriya Sadan,

Koramangla, Bengaluru-560 034 -

RESPONDENT

For the Petitioner (s) : Ms. Annapoorna.S, # 211, 8th Cross, HMT Layout,
Mathikere, Bengaluru-560054 Advocate and Authorised
Representative for the Petitioner Company.

Per: **Hon'ble Shri Ratakonda Murali, Member (Judicial)** – Author

Heard on: 13/12/2017, 12/01/2018 , 30/01/2018 & 12/02/2018

O R D E R

The Petitioner Company **Vividha Foods and Delicacies 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 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 incorporated on 28th December 2011 under the name and style of "**Vividha Foods and Delicacies Private Limited**" with the Registrar of the Companies, Karnataka and obtained Certificate of Incorporation vide bearing CIN No. **U15122KA2011PTC061875**. The Registered Office of the Petitioner Company is situated at # 1, Sindoor, 2nd Main, 3rd Cross, Ashrama Colony, RMV 2nd Stage, Sanjayanagar, Bengaluru-560094.

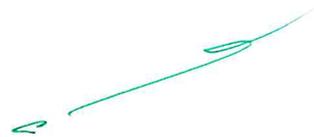
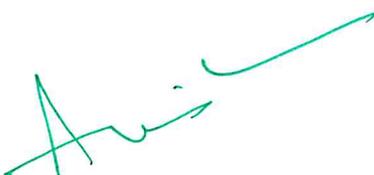
The main objects of the Company is to carry on business of production and marketing of food products including dairy, horticulture, poultry and deal in all kind of poultry, dairy products, aquaculture, green house, meat, fish, eggs and any other farm products; to provide/develop post-harvest infrastructure like cold storage, cold chain facilities, setting up of modified/controlled atmospheric cold storage, cold storage which is integral part of processing activities, cold storage which is a part of setting up of food parks, developing up pre cooling facilities, refrigerated transportation system, and refrigerated retail outlets etc., Details of the objects of the Company are mentioned in the Memorandum and Articles of Association of the Petitioner Company.

The Authorised share capital of the Company is Rs 1,00,000/- divided into 10,000 equity shares of Rs 10/- each and the Issued, Subscribed & Paid-up Share Capital is Rs 1,00,000/- divided into 10,000 Equity Shares of Rs 10/- each.

It is averred in the Company Petition that, the Petitioner Company came to know that the name of the company has been struck off by the Registrar of Companies, Karnataka, Bengaluru under section 248(1) of the Companies Act, 2013 on 28th April 2017 vide Notice No. STK-7/ROC(B)/2017/1 due to non-filing of statutory compliances viz., Financial Statements and Annual Returns for the period 2011-12 to till 2015-16.

It is averred in the Company Petition that, the Petitioner Company has not generated any revenue for a period of three financial years from the date of its incorporation i.e., 2011-12, 2012-13 and 2013-14, due to which there was a severe cash crunch in the Company and now the company started generating revenue from 2014-15 and onwards. The Petitioner Company admitted that, due to lack of cash flow the company has not filed the statutory returns.

It is further averred that, the company has availed working capital loan of Rs 30,00,000/- from Vijaya Bank, K.G Road Branch. The company has hypothecated stock of food items and machinery at 25% margin book debt upto 90 days at 40% margin and the collateral has been availed against the same EMTD of land and building situated at Mysore.

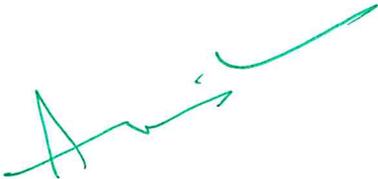


It is further averred that, the Petitioner Company is having some workers and their wages are held up due to the company's name has been struck off and the bank accounts have been frozen for debit and the company is unable to make the payment. The company has outstanding payment to its creditors to the tune of Rs 1,43,000/- as on date and the company has been making regular payment to the creditors of the Company for purchase of raw material and other incidental cost as incurred.

It is further averred that, the Petitioner Company has enclosed the following documents giving justification /substantiating that the company has been operational as under:-

- a) The company has filed Income Tax return for the Assessment Year 2014-15 & 2016-17 which is shown as **Annexure-5**.
- b) The Company obtained registration from Department of Factories and Industries on 01/01/2015 which is shown as **Annexure-6**.
- c) The company has been registered under FSS Act 2006 bearing licence No. 11216302000047 and has been renewing the licence regularly which is shown as **Annexure-6**.
- d) The company has been registered under the Karnataka Value Added Tax under Rule 9(1) which is shown as **Annexure-6**.
- e) The company has availed Goods and Services Tax Registration and has migrated as on 01/07/2017 which is shown as **Annexure-7**.

It is further averred that, there is no inquiry, investigation and complaints against the Petitioner Company. It is also averred that, upon restoration of the name of the company in register of companies, the Petitioner Company will comply and file all its pending balance sheets and annual returns with the Registrar of Companies, Karnataka, Bengaluru which is enclosed and shown at pages 121-126.



The Counsel for the Petitioner has stated that, the Company has filed this petition within the limits laid down under section 252(3) of the Companies Act, 2013.

The Registrar of Companies, Karnataka, Bengaluru has filed Counter Affidavit dated 30th January 2018 along with annexure.

The Registrar of Companies, Karnataka, Bengaluru denied all the averments made in the petition except those which are specially admitted herein and submitted his report 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 2011-12 to till 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 17/03/2017 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 Mrs. Vinay Muddukrishna, Mr. Galla Sanjay and Mr. Sujan, directors of the Company. Copies of the said notices are produced and marked as **Annexure-III, IV & V**.
- 2) In the said notice STK-1 that was sent to the company and to the directors of the company, it was inter-alia mentioned that the petitioner company has not been carrying on any business or operation 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 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 **Annexure- VI, VII, VIII & IX** 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 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 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**.
- 5) It is stated in the petition that, the Petitioner Company has not generated any revenue for a period of three financial years from the date of incorporation i.e., Financial Year 2011-2012, 2012-13, 2013-14 due to which there was a severe financial crunch in the company. It is also stated that, the company started generating revenue from the financial year 2014-15 and onwards and due to the lack of cash flow the company has not filed statutory returns and that it is a small and closely held company whjich is operating with a valid registration with authorities mentioned in Para 4.7 of the Petition. It may be seen that the Registrar of Companies has sent the STK-1 notice to the company and its Directors exactly to the same address mentioned in the MCA 21 Portal.
- 6) Though 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 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 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 compliances 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, Karnataka, Bengaluru has stated that, he 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 No. STK-7/ROC(B)/2017/1 dated 17th July 2017.

It is also averred from the report of Registrar of Companies, Karnataka, Bengaluru the Petitioner Company has committed default in not filing the Statutory Returns for the Financial Years 2011-12 till 2015-16 before the Respondent i.e. Registrar of Companies. The Directors are willing to continue the company since it is engaged in the business of production and marketing of food products like dairy, horticulture, poultry and other farm products and the business of the company is ongoing basis and also stated that the company was carrying on business at the time of strike off. The Petitioner Company prayed that the name of the Company be restored in the Register of Companies under section 252 of the Act. The copies of the Audited Balance Sheet for the financial years 2014-15 and 2015-16 are shown in the Memo dated 12th February 2018 filed by the Counsel for the Petitioner Company.

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 Counsel for the Petitioner Company, who contended that, the Petitioner Company is doing its business on a going concern basis and the Petitioner Company has not generated any revenue for a period of three financial years from the date of incorporation i.e., Financial Year 2011-2012, 2012-13, 2013-14 due to which there was a severe financial crunch in the company and now the company started generating revenue from 2014-15 and onwards and further contended that. due to lack of cash flow the company has not filed the statutory returns. She further contended that, the Applicant Company will file necessary Financial Statements and Annual Returns soon after restoration of the name of the company with the Registrar of Companies, Karnataka-Bengaluru and prayed the Tribunal to revive this Company.

The Counsel for the Petitioner Company has filed Memo dated 19th December 2017 alongwith Affidavit of the Director of the Company giving justification for restoration of name of the Company in the Register of Companies as maintained by Registrar of Companies, Karnataka, Bengaluru. It is stated in the Affidavit that, after receiving the order of Revival of the company from this Hon'ble Tribunal, it will undertake to file all the pending Balance Sheets and Annual Returns with the Registrar of Companies, Karnataka, Bengaluru within 30 (thirty) days from the date of receiving the order. Further, the Counsel for the Petitioner Company has filed Affidavits dated 25th October 2017 of the Directors of the Company stating that, the company has not entered into any irregular transactions nor has made any abnormal deposits in the bank account during the period of demonetization.

Further, we have seen the latest Balance Sheet as on 31st March 2017 of the Petitioner Company. The Petitioner Company is having Non-current Assets worth of **Rs 10,78,903/-** and Current Assets of **Rs 78,19,742/-** and the turnover of the Petitioner Company is **Rs 64,93,190/-**. Further the turnover of the Company was **Rs. 33,97,817/-** for the financial year ending 31/03/2016 as per Balance Sheet. After hearing the Counsel for the Petitioner Company and after perusal of the materials 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 and name of the Company to be restored in the Register of Companies as maintained by Registrar of Companies. The name of the Company be ordered to be restored and

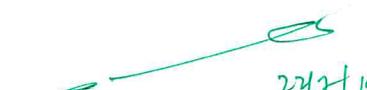
THIS TRIBUNAL DO FURTHER ORDER:

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 2011-12 to till 2015-16 and for subsequent year in the prescribed format as required under the Companies Act, 2013 be filed with the Registrar of Companies, Karnataka, Bangalore.

The Petitioner Company is also directed that, the revival order will be 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. 75,000/-** 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, Bengaluru is further directed to restore the name of the Petitioner Company i.e. **Vividha Foods and Delicacies 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