

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

**C.P.NO.25/BB/2018**

Under Section 252(3) of Companies Act, 2013

Order delivered on 22<sup>nd</sup> February, 2018

**IN THE MATTER OF**

**M/s. HARIHARA DEVELOPERS & CONSTRUCTIONS PRIVATE LIMITED**

**M/s. Harihara Developers & Constructions Private Limited  
No.2/1, II Cross, Opp. Narang Apartments  
Subramanya Temple Street, Kumarapark West  
Bengaluru 560 020**

... **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. RC Venkatesh Rao  
New No.20 (Old No.35), Mallikarjuna Temple St.  
Opp. Bangalore Chapter of ICWAI, Basavanagudi  
Bangalore 560 004  
Practicing Company Secretary for the Petitioner**

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

**Heard on : 12.01.2018, 18.01.2018, 02.02.2018 and 13.02.2018**

**ORDER**

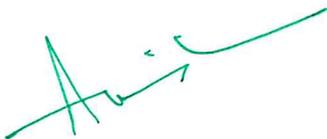
The Petitioner Company M/s. Harihara Developers & Constructions Private Limited has filed the present petition under Section 252(3) of the Companies Act, 2013 with a prayer for issuance of directions to the Registrar of Companies, Karnataka to restore the name of the Company as originally existed in 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. Harihara Developers & Constructions Private Limited** was incorporated with the Office of the Registrar of Companies, Karnataka on 23<sup>rd</sup> August, 2007 bearing CIN: U70109KA2007PTC043684, under the provisions of the Companies Act, 1956 as a Private Limited Company, with its **Registered Office at No.2/1, II Cross, Opp. Narang Apartments, Subramanya Temple Street, Kumarapark West, Bengaluru 560 020.**
2. That the name of the Petitioner Company has been struck off by the Registrar of Companies, Karnataka, vide notice No. STK-7/ROC (B)/2017/1 dated 17.07.2017 suo motto. The notice was received by the Directors from the Ministry of Corporate Affairs, did not reach the Directors in time.
3. That the Petitioner Company is functioning since the last 10 years and has taken development activities at Hebbal Housing Industrial Area at Mysore.
4. That the Company created substantial assets as its funds for the project; the project is yet to be completed.

The object of the Petitioner Company is to carry on the business of development, construction of buildings or residential and commercial buildings and associated as of date functions as its main objects and still continuing its business uninterruptedly.



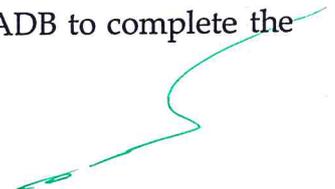
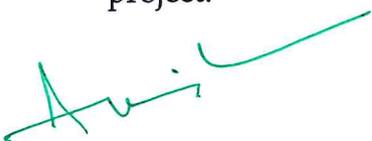
The Company has filed Balance Sheet duly certified by a Chartered Accountant for the years 2010-11 to 2016-17. The Company is having fixed assets and certain current assets as on 31.03.2017.

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 25.01.2018.

The Directors/Members of the Petitioner Company has also filed an affidavit duly notarized dated 25.01.2018 undertaking to file all the overdue Balance Sheet, and Annual Returns 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 Petitioner has also stated through an affidavit dated 12.02.2018 the following:

1. KIADB has increased the rate for allotment of land cost by about Rs. 2 lakhs and this being considered unreasonable is being negotiated as the land is in a notified backward area and once the approval is given project implementation will be further speeded up.
2. It is well accepted that in long term investment and infrastructure project the expenses have to be classified as Revenue and Expenditure until then only Balance Sheet can be prepared and expenditure pending capitalisation will not be appearing in the Profit and Loss account.
3. NCLT may observe from the petition from the Balance Sheet filed along with application from page No.12 to 18 that the Company has invested Rs. 8.35 lakhs and waiting for further clearance from KIADB to complete the project.



4. The land is allotted by Govt. agency and is being monitored by KIADB. A copy of the letter No.KIADB/MYS/1759/2664/2017-18 dated 25.09.2017 is enclosed confirming the above.

When maintenance charge and lease rental upto 2017-18 has been demanded the same is under negotiation and once negotiation is complete project will go on full stream.

The Registrar of Companies has filed counter affidavit dated 12<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 Petitioner Company is registered with Registrar of Companies on 23.08.2007 with CIN: U70109KA2007PTC043684 and as per the records of the Company in MCA 21 Portal, the Registered Office at No. 2/1, II Cross, Opp. Narang Apartments, Subramanya Temple Street, Kumarapark West, Bangalore 560 020. 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 from the year 31.03.2011 to 31.03.2016. Therefore, the Respondent had reasonable cause to believe that the Petitioner Company is not carrying on any business or operation.
3. Further STK-1 dated 22.03.2017 was sent to the Company and to Mr. Kishen Reddy Beravol and Gulur Venkataramana Rao Krishna, 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-II**.

4. In the said notice STK-1 that was so sent as said above, it was mentioned that the Petitioner Company is not 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 Act unless a cause is shown to the contrary within 30 days from the date of receipt of the STK-1 notices;
5. 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-III, V, VI and VII** respectively.
6. The Company has cited want of due advice as a reason for not filing the annual reports and balance sheets. The Company has not filled the Balance Sheet and the Annual Report for the year 2010-11 till 2015-16. 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 claimed in the petition that it is a functioning Company and has enclosed the copies of the Balance Sheet of the year 2011-12 to 2016-17 in annexure V of the Company petition herein, as per which it is functioning Company.
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



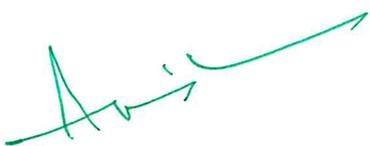
Tribunal willing to revive the Company, then the Respondent humbly prays that this Hon'ble Tribunal may kindly,

- 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.

After hearing the Counsel for the Petitioner Company and perusal of material on record, the report of 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 since the Petitioner Company is a going concern, the name of the Company to be restored in the Register of Companies as maintained by Registrar of Companies. Considering all the above facts and circumstances, this Tribunal has viewed that the restoration will be in the interest of the Company and various stakeholders.

**HENCE 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 2010-11



till 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. 90,000/- as cost to the account of Central Government in favour of the Pay & Accounts Officer, Ministry of Corporate Affairs, Southern 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. HARIHARA DEVELOPERS & CONSTRUCTIONS 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