

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH, BENGALURU

C.P. No.21/BB/2023
U/s. 252(3) of the Companies Act, 2013

IN THE MATTER OF:

Mr. Anil Anthony Gracias

Member of M/s. Digiapt Software Technologies Pvt. Ltd.

Regd. Office: 210 B,

EL Dorado Marathahalli,

Outer Ring Road,

Bangalore - 560 037.

- Applicant/Petitioner

VERSUS

The Registrar of Companies, Karnataka

'E' Wing, 2nd Floor,

Kendriya Sadana, 17th Cross,

Koramangala,

Bengaluru - 560 034.

- Respondent

Order delivered on: 20.07.2023

CORAM: 1. Hon'ble Justice (Retd.) T. Krishnavalli, Member (Judicial)

2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

PRESENT:

For the Petitioner/Applicant

: Shri Qaisarahmed (PCS)

ORDER

Per: T. Krishnavalli, Member (Judicial)

1. This Petition has been filed on 10.02.2023 by Mr. Anil Anthony Gracias, Member of M/s. Digiapt Software Technologies Pvt. Ltd. (hereinafter as Applicant/Petitioner), under Section 252(3) of the Companies Act, 2013, praying for restoration of the Company's name i.e. M/s. Digiapt Software

Technologies Pvt. Ltd. in the Register of Companies maintained by Registrar of Companies, Karnataka (hereinafter referred as "ROC/Respondent").

2. **M/s. Digiapt Software Technologies Pvt. Ltd.** (hereinafter called as 'Company') was incorporated on 18.06.2010 under the Companies Act, 1956 bearing CIN: U72900KA2010PTC054128, and having its registered office at 210 B, EI Dorado Marathahalli, Outer Ring Road, Bengaluru-560037. The Authorised Share Capital of the Company is Rs.10,00,000/- divided into 1,00,000 equity shares of Rs.10/- each and the Issued, Subscribed and paid up capital is Rs.1,00,000/- divided into 10,000 equity shares of Rs.10/- each.
3. The ROC has sent notice in Form STK-1. Further, notice in Form in STK-5 issued on 07.12.2021 and finally STK-7 was issued by the ROC on 08.02.2022.
4. It is stated that the Company failed to make the filing of Balance Sheets (Form MGT-7 and AOC-4, for the relevant years before the due dates. The Management was not fully equipped with the professional staff and the Directors were not aware about the legal obligations of filings and requisite compliance then. Due to unavoidable circumstances the Company has not made the filing of balance sheets from the years 2018-19 to 2020-21. The Company has received notice under Section 248 of the Companies Act 2013 from the ROC for non-filing of Balance Sheets and Annual Returns. Since the Directors of the Company were out of station and were preoccupied on other assignments inadvertently there occurred a delay in responding to the notice and the status of the Company has been marked as 'Strike off'.
5. It is further stated that the delay in filing the Balance Sheets and Annual return has occurred accidentally without any *mala fide* or wilful intention on the part of the Applicant is not of a nature to prejudice the position of creditors or shareholders of the Petitioner Company. The Company is going concern and having regular business. The Petitioner declares that it has not previously filed any application, writ application or suit regarding the

matters in respect of which this Application has been made, before any Tribunal or any other Bench and no such application, writ application or suit is pending before any of them.

6. The ROC filed its report vide Diary No.1929 dated 10.04.2023 by *inter alia* pointed out following observations:

“4. It is submitted that on verification of the MCA 21 portal 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 Balance Sheets and Annual Returns from the Financial Year 2018-19 to 2020-21. Therefore, the Respondent had reasonable cause to believe that the Petitioner Company was not carrying on any business or operation and therefore a notice in Form STK-1 and STK-5 notices were issued.

5. In the said STK-1 notice 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 operations for two immediately preceding financial years nor has filed application under Section 455 of the Companies Act, 2013 and that the Respondent intended to strike off the name of the company from the Register of Companies as per Section 248 of the said Act, unless a cause is shown to the contrary within 30 days from the date of receipt of the STK-1 notice.

6. It is submitted that since no cause was shown either to 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 the day on which the list of defaulting companies were crystalized, the Respondent proceeded to strike off the name of the company with the effect from 01.02.2022 and the ROC had published a Notice in STK-7 in the Official Gazette on 05.02.2022 stating the names of the companies mentioned therein including the Petitioner Company which have been struck off the Register of Companies as per Section 248(5) of the Act. The Respondent has complied with all the procedure prescribed under Section 248 of the Companies Act, 2013 before removal of the name from the register.

7. The Petitioner Company states that the Company has received the notice under Section 248 of the Companies Act, 2013 for non-filing of Balance Sheet and Annual Returns. Since the directors of the Company were out of station and were preoccupied on other assignments inadvertently there occurred a delay in responding to the notice. Further, the Company has failed to make the filing of Balance Sheets (MGT-7 and AOC-4), for the years before the due dates. The management was not fully equipped with the professional staff and

the Directors were not aware about the legal obligations of filing and requisite compliances then. The Company is ready and willing to pay such amount by way of fine as applicable and willing to make all necessary compliance.

8. There is no inquiry, investigation, and complaints pending against this Petitioner Company. However, it is not known any disputes in the management of the Company/cases pending in court matters.

9. The Petitioner has prayed that the name of the Company be restored to the Register of Companies under Section 252 of the said Act. In view of the prayer by the Petitioner Company, and subject to the satisfaction of this Tribunal and in the event of this Tribunal willing to revive the Company, the Respondent humbly prays that this Tribunal may kindly:

(a) Direct the Petitioner to undertake to file all overdue returns up to date within 30 days in the MCA 21 Portal from the date of the order of Hon'ble NCLT reviving the Company and comply with the provisions of the Companies Act, 2013;

(b) The DIN of the disqualified Directors may not be ordered for activation as the matter about disqualification and DIN deactivation made by the Ministry by invoking section 164 (2) (a) read with 167 of the Companies Act, 2013 is before the various High Courts including the Division Bench of the Hon'ble High Court of Karnataka;

(c) Direct the Petitioner to pay cost as decided by this Tribunal to be paid online to the account of Central Government, Ministry of Corporate Affairs, towards the expenses incurred by the Respondent in initiating action under Section 248 of the Companies Act, 2013;

(d) The Registrar of Companies has incurred huge cost for striking off the Company due to default in filing statutory documents which includes manpower, advertisement, statutory cost, postal charges etc. It is humbly requested that reasonable cost may be imposed to the Petitioner and direct the Petitioner to pay cost as decided by this Hon'ble Tribunal to be paid online to the account of Central Government, Ministry of Corporate Affairs, towards the expenses incurred by the Respondent in initiating action under Section 248 of the Companies Act, 2013;

(e) The revival order be automatically vacated, if the above compliances are not made within a maximum period of 30 days from the date of receipt of the Order by the Petitioner".

7. Heard Shri Qaisarahmed, learned PCS for the Applicant/Petitioner. We have carefully perused the pleadings of the party and extant provisions of the Act, and the Rules made thereunder.
8. On perusal of the ROC report it is found that there was no important observations made against the Company. Therefore, in view of the facts and circumstances discussed above, we are inclined to allow this instant Petition.
9. Upon considering the facts and circumstances and the pleadings of the present Petition, this Tribunal is of the view that it is a fit case for restoration of the name of the Company and accordingly, the instant C.P. is allowed. Further, this order will be subject to payment of costs of (1) Rs.1,00,000/- to be paid in favour of "Pay and Accounts Officer, Ministry of Corporate Affairs, Chennai", through MCA website (2) Rs.50,000/- to be paid in favour of "The Prime Minister's National Relief Fund", within three weeks from the date of receipt of the duly certified copy of this order.
10. This Petition is disposed of on the terms directed above. The ROC shall give effect to this order only after perusal of the compliance report of the cost imposed. The Company is directed to file all the required documents and shall fulfil all the other relevant statutory compliances, such as under the Income Tax Act, 1961, etc., in accordance with law within 30 days from restoration of its name in the Register of Companies maintained by the ROC.
11. Copy of this Order be communicated to the Petitioner and the Registrar of Companies, Karnataka.
12. Accordingly, **C.P. No.21/BB/2023 is disposed of.**

Sd/-
(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)

Sd/-
(T. KRISHNAVALLI)
MEMBER (JUDICIAL)