

IN THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH, BENGALURU
(Through web-based video conferencing platform)

C.P.No.42/BB/2023
Under Section 252 of the
Companies Act, 2013
R/w. Rule 87A of NCLT Rules, 2016

IN THE MATTER OF:

Shri Sushil Khemka
(On behalf of M/s. Eagle Business Services Pvt. Ltd.)
Shareholder of M/s. Fitwell Caps Limited

No.96/2, Budhigere Cross, Devanahalli Road,
Off Old Madras Road,
Bengaluru – 560 049 - Applicant/Petitioner

AND

The Registrar of Companies, Karnataka
'E' Wing, 2nd Floor,
Kendriya Sadana, 17th Cross,
Koramangala,
Bengaluru - 560 034. - Respondent

Order delivered on: 24th August, 2023

CORAM: 1. Hon'ble Justice (Retd.) T. Krishnavalli, Member (Judicial)
2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

PRESENT:

For the Petitioner : Shri K. Dushyantha Kumar, PCS

ORDER

Per: T. Krishnavalli, Member (Judicial)

1. This Petition has been filed by Shri Sushil Khemka, (On behalf of M/s. Eagle Business Services Pvt. Ltd.) Shareholder of M/s. Fitwell Caps Limited (hereinafter referred as Applicant/Petitioner), under Section 252 (3) of the Companies Act, 2013 R/w. Rule 87A of NCLT Rules, 2016 (hereinafter referred as "Act"), praying for restoration of the Company's name in the Register of Companies maintained by Registrar of Companies (ROC), Bengaluru (hereinafter referred as "ROC").

2. The Petitioner Company was incorporated on 15.07.1971, under the Companies Act, 1956, bearing CIN: U8511KA1971PLC002073 and having its registered office at No.96/2, Budhigere Cross, Devanahalli Road, Off Old Madras Road, Bengaluru. The Authorised Share Capital of the Company is Rs.25,00,000/- (Rupees Twenty Five Lakhs only) divided into 25,000 Equity Shares of Rs.100/- each and the issued, subscribed & paid up capital of the Applicant Company is Rs.5,00,000 (Rupees Five Lakhs only) divided into 5,000 (Five Thousand) Equity Shares of Rs.100/- each. The main objects of the Company *inter alia* is to establish small scale industrial units for manufacturing pilfer proof caps, screw caps, crown corks, and tin containers of all sizes and shapes (printed and plain) etc.
3. It is stated that the Company was in receipt of a default notice in the Form No.STK-1 dated 28.06.2018 for not carrying on any business or operation for a period of two immediately preceding financial years and for not making any application within such period for obtaining the status of a dormant Company U/s.455 of Companies Act, 2013. However, the name of the Company has been struck off by the Registrar of Companies, Karnataka in the month of 23.10.2019. The Company has been undergoing a bad patch and therefore it has been unable to make the statutory filings.
4. It is stated that the Company has been active since incorporation and has duly filed the Financial till 2016 and Income Tax return till 2022.
5. The ROC filed its counter affidavit vide Diary No.2731 dated 26.05.2023, by inter alia pointed out following observation:

“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 2016-17 to 2018-2019. 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 U/s.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 was 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 crystallized, the Respondent proceeded to strike off the name of the Company with effect from 23.10.2019 and the Register of Companies had published a Notice in STK-7 in the Official Gazette on 09.11.2019 stating the names of the Companies mentioned therein including the Petitioner Company which have been struck off from the Register of Companies as per Sec.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 been active since incorporation and has duly filed the financial till 2016 and Income Tax return till 2022. Further, that the present Petition is made bona fide and in the interest of justice and the Company has been undergoing a bad patch and therefore it has been unable to make the statutory filings.

8. It is submitted that there is no inquiry, investigation, and complaints pending against this Company. It is not known whether any disputes in the management of the Company/cases are pending in court matters.

9. (a) The Tribunal may kindly, 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 as a matter regarding 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 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.

(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 requested that reasonable cost may be imposed upon the Petitioner herein 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 may be treated as 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”.

6. In compliance to the above, Ld. PCS for the Petitioner has filed Compliance memo vide Diary No.2840 dated 31.05.2023, wherein the Petitioner undertakes to file all the overdue returns up to date, within 30 days from the date of the order of this Tribunal and also undertakes to pay all the costs as decided by this Tribunal.
7. Heard Shri K. Dushyantha Kumar, learned PCS appearing for the Applicant/Petitioner. We have carefully perused the pleadings of the party and extant provisions of the Act, and the Rules made thereunder. In this case on perusal of the ROC report it reveals that there was no important observation given by the ROC as against the Petitioner.
8. Upon considering the facts and circumstances and the pleadings of the present Petition, this Bench is of the view that it is a fit case for restoration of the name of the Company and accordingly, instant C.P. is allowed. Further, this order will be subject to payment of costs of (1) Rs.1,25,000/- to be paid in favour of “Pay and Accounts Officer, Ministry of Corporate Affairs, Chennai”, through MCA website and (2) Rs.75,000/- 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.

9. 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 RoC.
10. Copy of this Order be communicated to the Petitioner and the Registrar of Companies, Bengaluru.
11. Accordingly, C.P.No.42/BB/2023 is disposed of.

-Sd-
MANOJ KUMAR DUBEY
MEMBER (TECHNICAL)

-Sd-
T. KRISHNAVALLI
MEMBER (JUDICIAL)