

IN THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH, BENGALURU

C.P. No.12/BB/2023

U/s. 252(3) of the Companies Act, 2013

IN THE MATTER OF:

Ms. Theiventhira Aruna

Member of M/s. Toysome Days Pvt. Ltd.

397, 25th B Main, 22nd Cross Sector 2,

HSR Layout,

Bangalore - 560 102. & another

- Applicants/Petitioners

VERSUS

The Registrar of Companies, Karnataka

'E' Wing, 2nd Floor,

Kendriya Sadana, 17th Cross,

Koramangala,

Bengaluru - 560 034.

- Respondent

Order delivered on: 10.04.2023

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

2. Hon'ble Shri Ashish Verma, Member (Technical)

PRESENT:

For the Petitioners/Applicants : Shri Anand Ayyappan (PCS)

ORDER

Per: T. Krishnavalli, Member (Judicial)

1. This Petition has been filed on 16.12.2022 by Ms. Theiventhira Aruna & Shri Lenin (hereinafter as Applicants/Petitioners) Members of M/s. Toysome Days Pvt. Ltd. under Section 252(3) of the Companies Act, 2013, praying for restoration of the Company's name i.e. M/s. Toysome Days Pvt. Ltd. in the Register of Companies maintained by Registrar of Companies, Karnataka (hereinafter referred as "ROC/Respondent").

2. **M/s. Toysome Days Pvt. Ltd.** (hereinafter called as 'Company') was incorporated on 21.09.2017 under the Companies Act, 2013 bearing CIN: U74999KA2017PTC106581. The Company is carry on the retail business of toys, books and apparels for children of all age groups etc. The Authorized Share Capital of the Company is Rs.1,00,000/- divided into 1,000 Equity Shares of Rs.100/- each and the Issued, Subscribed & Paid-up Share Capital of the Company is Rs.1,00,000/- divided into 1,000 Equity Shares of Rs.100/- each.
3. It is stated that the Company has defaulted its statutory compliances namely, failure to the Financial Statements and Annual Return for the Financial Years 2017-18, 2018-19, 2019-20, 2020-21 and 2021-22. Consequently, the ROC, has initiated proceedings under Section 248(1) of the Companies Act, 2013 to strike off the name of the Company form the Register maintained by the ROC, Karnataka.
4. It is also stated that the Petitioner Company did not receive any show cause notice, nor was afforded any opportunity of being heard, before the ROC had proceeded to issue notice under Section 248(5) of the Companies Act 2013 publishing the name of the Petitioner Company in the official Gazette on 01st February 2022. The Directors of the Company came to know the status of the Company has been marked as 'strike off' when the Petitioner Company has received the notice from the ICICI Bank with whom the Petitioner Company is maintaining the current account of the Company with immediate effect. Any debit from or credit to the account shall be permitted only for the purposes prescribed under Section 250 of the Act.
5. It is stated as on 14th September 2022, the current account of the Petitioner Company held with ICICI bank has a cash balance of Rs.17,29,387/- (Rupees Seventeen Lakhs Twenty Nine Thousand Three Hundred Eighty Seven only) and was not able to deposit or withdraw money from the current account for its day-to-day business operations and activities since the account is completely frozen by the

Banker due to the order issued for the Strike Off by the ROC. Accordingly, the existing Directors and Authorised Signatories of bank accounts of such non-existing legal entity shall not be able to operate the bank account of the Company. This has created undue hardship for running the business activities of the Company such as receiving the money from customers, payment to vendors, staff salaries etc.

6. It is further stated the delay in filing the Balance Sheet and Annual return has occurred accidentally without any mala fide or wilful intention on the part of the Petitioners and is not of a nature to prejudice the position of Creditors or Shareholders of the Petitioner Company. The Company has been active since incorporation and prepared accounts on going concern basis and has also been maintaining all the requisite documentation, as per the provisions of the Companies Act, 2013. The Petitioners are ready and willing to pay such amount by way of fine as applicable and willing to make all necessary compliance with regard to filings for Financial Year 2017-18 and further.
7. The Petitioners declare that they have not previously filed any application, writ petition or suit regarding the matter in respect of which this application has been made, before any Court of Law or any other authority or any other Bench of the Board and not any such application, writ petition or suit is pending before any of them.
8. The ROC filed its report vide Diary No.1660 dated 23.03.2023 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 or the Annual Returns from the date of incorporation. 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 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 Company 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 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 advertently the Company failed to make the filing of financial statements and annual returns before the due dates. The management was not fully equipped with the professional staff and the Directors were not aware about the legal obligation of filing and requisite compliance then. Due to unavoidable circumstances the company has not filed the requisite returns with ROC for the FYs 2017-18 to 2021-21. Further states that the Company is are ready and willing to pay such amount by way of fine as applicable and willing to make all necessary compliance with regard to filings for Financial Year 2017-18 and further.

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. 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 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".

9. Heard Mr. Anand Ayyappan, learned PCS for the Applicants/Petitioners. We have carefully perused the pleadings of the party and extant provisions of the Act, and the Rules made thereunder.
10. 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 the instant Petition.
11. 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, 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", 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.
12. 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.

13. Copy of this Order be communicated to the Petitioners and the Registrar of Companies, Karnataka.

14. Accordingly, C.P. No.12/BB/2023 is disposed of.

Sd/-

**(ASHISH VERMA)
MEMBER (TECHNICAL)**

Sd/-

**(T. KRISHNAVALLI)
MEMBER (JUDICIAL)**