

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD.

C.A. No.20/252/HDB/2018
U/s 252(3) of the Companies Act, 2013(18/2013
Rule – 87A of the NCLT (Amendment) Rules, 2017

In the Matter of

M/s. Aerocon Hyderabad Infra Projects Private Limited.
Registered office : Plot No.159, H.No.2-3-144,
Road.No.18, Snehapuri X Roads,
Hyderabad
Telangana -500 035

.... Petitioner

Versus

Registrar of Companies, Hyderabad,
2nd Floor, Corporate Bhawan, GSI Post,
Tattiannaram, Nagole, Bandlaguda,
Hyderabad-500068.

...Respondent

Date of Order: 26.02.2018

C O R A M:

Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)

Parties/Counsels Present:

For the Applicants : Mr.V.Venkata Rami Reddy,
Advocate
For Respondent : Mr. R.C.Mishra,
Registrar of Companies.



Per: Rajeswara Rao, Member (Judicial)

ORDER

1. The Present Company Application bearing CA No.20/252/HDB/2018 is filed by Mr.V.Venkata Rami Reddy representing M/S. Aerocon Hyderabad Infra Projects Private Limited Private Limited, under Section 252(3) of Companies Act, 2013, R/w Rule- 87A of the NCLT (Amendment) Rules, 2017, by inter-alia seeking to pass appropriate order for restoration of the name of the applicant in the Registrar of Companies, Andhra Pradesh and Telangana, to activate DIN Nos of the applicants; and also de-freeze the Bank Account.

2. Brief facts of the case, as mentioned in the application, are as follows:

- a. M/S. Aerocon Hyderabad Infra Projects Private Limited (hereinafter referred to as the Applicant) was incorporated under the Companies Act, 1956 on 25th May, 2009 as a Private Limited Company with the Registrar of Companies, Andhra Pradesh and Telangana and its registered office at Hyderabad, Telangana. The Company is established with main object of to carry on in India or elsewhere, either alone or jointly with one or more persons, government, local or other bodies, the business to construct build, alter, acquire, convert, improve, design, erect, establish equip broker, supervisor, etc.. in all its branches such as multi storeys , colonies , complexes, housing projects



- b. The Authorized Share Capital of the 1st Respondent Company is Rs. 1,00,000/- (Rupees One Lakh only) divided into 10,000 (Ten Thousand) Equity Shares of Rs.10/- (Rupees Ten Only) each. There are two directors in the Applicant Company Mr. Phani Surya Kiran Yellapanthulu and Mr. Chandra Shekhar Yellapanthulu.

Its CIN: U45209TG2009PTC063745.

- c. It is humbly submitted that the Applicant Company filed its ITR's. The ITR's of the Assessment Years 2017-18, 2016-17 and 2015-16, 2014-15. It is humbly submitted that the Applicant Company is also filing its CST Returns & VAT Returns. It is humbly submitted that the Applicant Company is also filing TDS returns.
- d. The responsibility of filing Annual returns with Registrar of Companies is entrusted to its accountant but he did not file the same with Registrar of Companies and without revealing this fact to the Management of the company he left the employment. It is further submitted that it was only two years i.e. in 2014-15 and 2015-16 the Company was not file Balance sheets and Annual returns but till the year 2013-14 the Company is regular in filing Balance sheets and Annual Returns. The issue was brought to the notice of the Management of the Company when it was informed by the bank vide its letter dated 16th October, 2017.
- e. Hence the Company was identified for strike off U/s 248(1) and STK-1 notice was issued to



- f. Company and its directors to the last known address as per MCA Portal and STK-5 notice dated 05.05.2017 was published in the Gazette and a paper publication also issued informing all the stake holders about STK-5 notice Since there is no objections received in respect of petitioner Company the company was marked strike off in MCA portal and STK-7 notice also published in the Gazette on 19.08.2017.
- g. Heard Mr.V.Venkata Rami Reddy, learned Counsel for the Applicant, that Bank Account of the Company i.e., HDFC Bank and YES Bank are freezed which facing lot of difficulties in running the business and also to pay salaries to their employees. So, we perused all pleadings along with extant provisions of law.
- h. Mr.V.Venkata Rami Reddy, learned Counsel for the Applicant. He has further submitted that the Company is having on hand orders to a tune kof Rs. 1,47,22,580/- from M/s.Larsen &Toubro & Emami Cements Limited. As the Applicant Company is ready to file pending compliances under provisions of the Companies Act, or relevant rules along with prescribed fees on or before the time stipulated by the Tribunal and also ready to pay the required Compounding Fee / Additional fee in accordance with the Rules.
3. In order to examine the issue of striking off companies, it is necessary to advert to relevant provisions in Companies Act, 2013. And the relevant provisions are sections 248 and 252 of The Companies Act 2013.



Chapter XVIII deals with Removal of Companies from the Registrar of Companies.

Power of Registrar to remove name of company from register of companies

248 (1) Where the Registrar has reasonable cause to believe that—

- (a) a company has failed to commence its business within one year of its incorporation;
- (b) the subscribers to the memorandum have not paid the subscription which they had undertaken to pay within a period of one hundred and eighty days from the date of incorporation of a company and a declaration under sub-section (1) of section 11 to this effect has not been filed within one hundred and eighty days of its incorporation; or
- (c) a company is not carrying on any business or operation for a period of two immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant company under section 455, he shall send a notice to the company and all the directors of the company, of his intention to remove the name of the company from the register of companies and requesting them to send their representations along with copies of the relevant documents, if any, within a period of thirty days from the date of the notice.
- (d) At the expiry of the time mentioned in the notice, the Registrar may, unless cause to the contrary is shown by the company, strike off its name from the register of companies, and shall Gazette of this notice, the company shall stand dissolved.
- (f) The Registrar, before passing an order under sub-section (5), shall satisfy himself that sufficient provision has been made for the realisation of all



amounts due to the company and for the payment or discharge of its liabilities and obligations by the company within a reasonable time and, if necessary, obtain necessary undertakings from the managing director, director or other persons in charge of the management of the company: Provided that notwithstanding the undertakings referred to in this sub-section, the assets of the company shall be made available for the payment or discharge of all its liabilities and obligations even after the date of the order removing the name of the company from the register of companies.

Appeal to Tribunal deals with under Section 252 of the companies' act, which reads as follows:

252 (1) Any person aggrieved by an order of the registrar, notifying a company is dissolved under section 248 May file an appeal to the Tribunal within a period of three years from the date of the order of the Registrar and if the Tribunal is of the opinion that the removal of the name of the company from the Register of companies is not justified in view of the absence of any of the grounds on which the order was passed by the registrar, it may under restoration of the name of the company in the register of the companies; provided that before passing any order under this section that liberal shall give a reasonable opportunity of making representations of being heard to the register, the company and all the persons concerned:

Provided further that if the register is satisfied that the name of the company has been struck off from the register of companies either inadvertently or on the basis of incorrect information furnished by the company or its directors, which requires restoration in the register of



companies he may within a period of three years from the date of passing of the order of dissolving the companies under section 248, file an application before the tribunal seeking restoration of name of such company

(2) A copy of the order passed by the Tribunal shall be filed by the company with the registrar within 30 days from the date of the order and on receipt of the order the Registrar shall cause the name of the company to be restored in the register of companies and shall issue a fresh certificate of incorporation



(3) If a company or any member or creditor or workmen d 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 workmen before the expiry of 20 years from the publication in the official Gazette of the notice under subsection (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 Registrar of companies, order the name of the company to be restored to the Registrar of companies, the Tribunal may, by the order, give other such directions and make such provisions as deem just for placing the company and all the persons in the same position as merely as may be in the name of the company had not been struck off from the Register of companies.

4. As stated supra, there is a prescribed procedure under the Act as to how the Registrar of Companies to

strike off from the Register of companies. By reading of averments made in the application and the submission made by the Learned Registrar of Companies, the impugned notices have been issued in accordance with law as stated supra. However, before taking final action to strike off a Concerned Company U/s 248(5), the Registrar of Companies, is under duty to follow provision 6 of section 248, which mandates the Registrar of Companies to satisfy himself that sufficient provisions has been made for realisation of all amounts due to the Company and for payment or discharge of its liabilities and obligations etc. Therefore, in the interest of Company and its employees and public employment, the case has to be considered favourably. The employees are to be paid their wages for the services rendered. And thus striking off the name of Company would also result in serious repercussions like Debit Freeze accounts of the Company with its Bankers etc. Therefore, a lenient view is required to be taken by the Tribunal in the interest of justice.

5. As per section 252 (3) as extracted above, a Company, or any member or creditor workman, if they feel aggrieved by striking off its name can approach the Tribunal by way of application, before expiry of 20 years after date of publication. On being filed an application, the Tribunal can order to restore striking off company on its role, if it is 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 name of a company be restored to the Registrar of companies.

As narrated supra, it is not in dispute that application



has been filed by properly authorised person on behalf of the Company, it is within limitation and it is carrying on business even at the time of impugned action, and it has suitably explained the reasons for not filing required documents with Registrar of Companies, which ultimately led to impugned action.

6. The Ministry of Corporate Affairs has issued a notification dated 21st January 2018 framing the rules under section 248 known as Companies (Removal of names from the ROC) Rules 2016

Rule 3 (2) and (3) are relevant to the present case, which is extracted below for ready reference:



“3(2): for the purpose of sub rule (1) The Registrar shall give a notice in writing in the form of STK-1 which shall be sent to all the Directors of the company at the addresses available on record by registered post with acknowledgement due or by speed post

3(3): The notice shall contain the reasons on which the name of the company is to be removed from the Register of companies and shall seek representations, if any against the proposed action from the company and its directors along with the copies of the relevant documents if any, within a period of 30 days from the date of notice

Manner of Publication of Notice:

The rule 7 is read as to the manner of publication of notice:-(1) the notice under subsection (1) or subsection (2) or section 248 shall be in form STK -5 or STK-6 , as the case may be

(I) placed on the official website of the Ministry of corporate affairs on a separate link established on such other website in this regard

(II) Published in the official Gazette

(III) Published in English language in leading newspaper and at least once in vernacular language in leading vernacular language newspaper, both having wide circulation in the state in which the registered office of the company is situated

Rule 9 deals with the Notice of striking off and dissolution of the company.

7. Article 19(g) in the Constitution of India 1950, confers right to all citizens of India to practice any profession or to carry on any occupation, Trade or Business.

In accordance with this Constitutional provision, the Companies Act of 2013 also confer such rights to its citizen by permitting them to incorporate a Company under the Act to carry on any profession, Trade and Business. In the instant case, it is not in dispute that the Company is incorporated in accordance with Act and prima facies to prove that the Applicant Company is following all extant provisions of companies Act in consonance with its Memorandum of Association and Articles of Association of the Company till the impugned violation(s) are noticed. It is not in dispute that Registrar of the Companies is empowered to take the impugned action and only the point here is that he has to strictly comply with provisions as extracted above. A Court/Tribunal cannot interfere with normal activities of business of a Company being carried on in accordance with law unless any serious violation of law committed by a Company. As stated supra, the impugned violations are not so severe so as to take serious view of it. Moreover, the Company has come forward to file all required documents and comply in



accordance with law by making payment of along prescribed/additional fee along with fine. It is also relevant to point out here that there is no bar for a Company, which is struck off, can register new company, in accordance with law.

8. As stated supra, the Company is in the business of construction in different places etc., and it is running without any interruption. In terms of section 248(6) of Act as extracted supra, the above consequences are required to be looked into while passing final order under 248(5) of the Act. It is no doubt that the Company, on its part, is under statutory obligation to comply with all extant provisions Companies Act, 2013. The Company is now satisfactorily explained to Tribunal the reasons for the delay in filing statutory returns in question and expressed its willingness to file them along with payment of prescribed fee.



As stated supra, the Learned ROC also did not oppose the application but submitted, it can be considered subject to compliance of statutory provisions and undertaking etc.

9. In the light of aforesaid facts and circumstances of case and the extant of provisions of the companies Act 2013 and rules here under, I am satisfied that the applicant Company has filed the present application within prescribed time under law, and also shown sufficient reasons to order Restoration of its name in the Register of companies maintained by the Registrar of Companies. Therefore, the Company application deserves to be allowed, however, subject to filing all pending returns, Annual returns, Balance sheets, statements etc., along with prescribed and addl. fee

under law. And also subject to giving undertaking that they would not resort to such type of violations in future.

15. By exercising the powers conferred on this Tribunal under Section 252 of the Companies Act, 2013, the Company application bearing CA No.20/252/HDB/2017 is **disposed of** with the following directions:

- 1) The Registrar of Companies, the respondent herein, is ordered to restore the original status of the Applicant Company as if the name of the company has not been struck off from the Register of Companies with resultant and consequential actions like changing status of Company from 'strike off to Active; to activate DIN Nos of the applicants; and also de-freeze the Bank Account like HDFC and YES Bank.
- 2) The Applicant company is directed to file all the statutory document(s) along with prescribed fees/ additional fee/fine as decided by ROC within 45 days from the date on which its name is restored on the Register of companies by the ROC;
- 3) The Company's representative, who has filed the Company application is directed to personally ensure compliance of this order.
- 4) The restoration of the Company's name is also subject to the payment of cost of Rs 30,000/- (Rupees Thirty thousand) to be paid into the account of Pay and Accounts Officer(PAO) Ministry, of Corporate Affairs by way of Demand Draft payable at Chennai;
- 5) The applicant is permitted to deliver a certified copy of this order with ROC within thirty days of the receipt of this order.



- 6) On such delivery and after duly complying with above directions, Registrar of Companies, Hyderabad is directed to, on his office name and seal, publish the order in the official Gazette;
- 7) This order is confined to the violations, which ultimately led to the impugned action of striking of the Company, and it will not come in the way of ROC to take appropriate action(s) in accordance with law, for any other violations /offences, if any, committed by the applicant company prior or during the striking off of the company.



Sd/-
Rajeswara Rao Vittanala
 Member (Judicial)

G. Anantha Lakshmi
 Dy. Regr./Asst. Regr/Court Officer
 National Company Law Tribunal, Hyderabad Bench

प्रमाणित प्रति
 CERTIFIED TRUE COPY
 केस संख्या
 CASE NUMBER... *CA No: 27/252/HDB/2018*
 निर्णय का तारीख
 DATE OF JUDGEMENT... *26.2.2018*
 प्रति तैयार किया गया तारीख
 COPY MADE READY ON... *8.2.2018*