

NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH: GUWAHATI

C.P. No.10/252(1)/GB/2018
[Dy. No.1 (26) A of 2018]

Under Section 252(1) of the Companies Act, 2013

In the matter of:

Kuber Polymers Pvt. Ltd.

... Applicant/petitioner

-versus-

Registrar of Companies, NE Region, Shillong

... Non-applicant/respondent

Order delivered on 07-03-2018

Coram:

HON'BLE MR. JUSTICE P.K. SAIKIA, MEMBER (JUDICIAL)

For the applicant/petitioner : Ms. Swati Tejawat, CA

For the Non-applicant/respondent : Mr. Khanindra Kr. Goswami, Advocate

ORDER

This application under Section 252(1) of the Companies Act, has been filed by the applicant /petitioner seeking the following reliefs: -

- a. *To allow this petition and pass an order thereby directing the respondent for restoration of its name in the Register of the respondent, as if name of the company had not been struck off in accordance with section 252 (1) of the Companies Act, 2013.*
- b. *Since the name of the Company was struck off by the respondent, the respondent be further directed not to initiate with penal action against the petitioner for default in filing of its annual return under section 92 of the Companies Act 2013 (Section 162 of the Companies Act 1956) and for default in filling the audited financial statements under section 137 of the Companies Act 2013 (Section 220 of the Companies Act 1956) or under any other provision of the Act.*
- c. *The Hon'ble Tribunal may pass such further orders as it deem fit in the circumstances of the matter.*
- d. *That the petitioner declares that the interest of none of the creditor/ shareholder or any person at large is prejudiced if the name of the Company restored in the register of Companies. Further, no one will be prejudiced if the name of the Company is restored.*
- e. *Unless an order as prayed for is made, the Company will suffer irreparable loss and prejudice."*

2. This Bench on the last occasion, has passed the following order on 13th February, 2018, urging the Registrar of Companies (in short "ROC"), NE Region, Shillong to submit his opinion in the form of

a report with regard to the prayer made in the application. Relevant part of the said order is reproduced below: -

"3. Heard Ms S. Tejawat, C.A. for the petitioner. In order to understand the dispute, which is highlighted in the present proceeding, one needs to go through the petition, more particularly, paragraph 4 thereof. For ready reference, paragraph 4 is reproduced below:

"This petition has been filed by Kuber Polymers Private Limited, (hereinafter known as the "Petitioner") under Section 252(1) of the Companies Act, 2013 praying for restoration of its name in the register of companies maintained by the Registrar of Companies, Shillong.

i) The petitioner was incorporated with the Registrar of Companies, Assam, Meghalaya, Tripura, Mizoram, and Nagaland & Arunachal Pradesh (hereinafter called the "respondent" as a Company limited by shares on 13th March, 2006 vide Certificate of incorporation No: 18-008087 of 2005-06 having CIN no. U72100ML2006PTC008087 with the object:

- (i) To manufacture industrial rubber Products, motor and bicycle tyres, tubes, rubber mattings and Fittings, gloves, mattresses, Sponges.
- (ii) To carry on the Business planters and cultivators of rubber plants, and any other plants producing anything of a similar character.
- (iii) To tap the rubber trees, prepare, process and manufacture rubber product and bye-products and exploit the material for profit in the market both in India and Abroad.
- (iv) To buy, procure or otherwise arrange for and enter into contract for the supply of rubber and rubber products and bye—products.

Presently, the registered office of the petitioner is stated to be situated at Fair Beau Cottage Kench's Trace, Shillong—793004, Meghalaya. In support of this statement, the copy of the Memorandum & Articles of Association of the Company along with certificate of incorporation are annexed to this petition and marked as Annexure "A1".

- ii) The petitioner begs to state that the company has been active since incorporation. The Company has maintained a Bank account with State Bank of India, Commercial Branch. In support of this statement, copies of Bank statements from April 1st, 2012 to 31st December, 2017 are annexed to this petition and marked as Annexure "B1".
- iii) The petitioner to prove its existence during the period 1st April 2012 and onwards further submits the copies of its audited Balance sheet for the financial year 2012-13 to 2016-17 and annexed to this petition and marked as Annexure "C1 to C5".
- iv) The petitioner company has during financial year 2013-14 to 2016-17 also held and convened, from time to time the Annual General Meetings of the Shareholders of the Petitioner Company and minutes of the same annexed to this petition and marked as Annexure "D1 to D5".
- v) The petitioner avers that the accounts of the company were prepared and audited every year, and same is reflected by the annexure attached to the petition. The petitioner company had engaged the service of a Chartered Accountant to perform the task of filing the statutory documents with the office of the respondent, due to some family set back, outstation location of the directors of the company and followed by financial difficulties and not availability of clerical staff with the Petitioner Company due to its remote location, lack of professional guidance and without any mala fide intention the directors concerned could not keep a track of status of filing of required statutory returns.
- vi) It is further averred that the Chartered Accountant who has since resigned, failed to file the requisite Annual Return for the period 2012-13 onwards which were required to be

filed by the petitioner under section 159 of the Companies Act 1956 (section 92 of the Companies act 2013) along with audited Balance sheet for the period 2012-13 onwards under section 220 of the companies Act 1956 (137 of the Companies act 2013).

- vii) The petitioner states that it came to the notice of the Petitioner Company has been struck off under section 560 of the Companies Act, 1956 (Section 252 (1) of the new Companies Act) only recently from portal of Ministry of Corporate Affairs. Further, it is submitted that the Petitioner Company has been trying to maintain all its requisite documents as per the provision of the Companies Act, as applicable to it but owing to the inadvertent and unavoidable conditions, the statutory documents as required under the law could not be filed with respondent in time. The status of the Company on web portal of the MCA shows 'Strike off' and the same is annexed to this petition and marked as Annexure "E".
- viii) The petitioner begs to state that it did not receive any show cause notice/letters as required under Section 560(1) and (2) of the Companies act 1956, nor was it afforded any opportunity of being heard before action under Section 560 (5) of the Companies Act 1956 was taken by the respondent."

3. In terms of the aforesaid order, the ROC has submitted his report vide letter No.RoC/Shill/5342 dated 23-02-2018. In his report, he has objected to/disputed that some of the averments made in sub-para (v) of Para 4 of the petition stating that such averments are not correct and not based on facts on records. However, in respect of other averments in the petition, the ROC did not dispute the same. For ready reference, the report of the ROC is also reproduced below: -

"1. That with respect to averments made in para 1,2 and 3, except for what are matters of facts and records everything is disputed and dined.

2. That averments made I para 4 except for sub-para viii, are the facts and submissions by the petitioner and the petitioner may be put to strict proof thereof and the averments only considered accordingly.

3. That averments made in sub-para viii of para 4 is false and misleading and your respondent humbly submits that the company was struck off in due and complete compliance of section 284 of the Companies Act, 2013, and notice dated 08.03.2017 was issued to the subject company enquiring therein, whether the company was carrying on business/operation or not and in case the company did, it was requested to reply within the time stated therein in the notice so issued. Since, no reply was received from the company, its name was finally struck off from the Register of Companies, u/s 248 on 09-06-2017. It is further submitted that, the plea that no notice was received by the company is wrong and misleading, as due notice had been issued to the company before finally striking its name off and also the notice addressed to the company did not return undelivered.

4. That with respect to averments made in sub-para 5 and 6, it is submitted that NCLT has jurisdiction u/s 252 of Companies Act, 2013 and with respect to limitation it is submitted that sub-section (1) of Section 252 of Companies Act, 2013 stipulates that any person aggrieved by an order of the Registrar, notifying a company as 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 order restoration of the name of the company in the register of companies: provided that before passing any order under this section, the Tribunal shall give a reasonable opportunity of making representations and of being heard to the Registrar, the company and all the persons concerned:

The name of the company was struck off and dissolved on 09.06.2017 and thus the application appears to be within the limitation prescribed subject to proof of the fact that petitioner is a shareholder/member of the struck off company.

5. That with respect to the averments made in para 7 and 8, except for what are matters of facts and record everything is disputed and denied and the petitioner may be put to strict proof thereof.

6. That averments made in para 10 are prayer of the petitioner before the Hon'ble Tribunal and the same may be considered by the Tribunal after due consideration of the facts and representation made by your humble respondent.

PRAYER

That if the prayer of the petitioner is considered by the Hon'ble Tribunal on merits in restoration of the name of the company u/s 252(1) of the Companies Act, 2013, the Hon'ble Tribunal may be pleased to direct the petitioner to:

- i) Comply with all statutory provisions of Companies Act, 2013 and file its pending statutory returns as per the Law prescribed within 30 days of the restoration order being passed.
- ii) To pay restoration cost of not less than Rs.10,000/- (Rupees Ten Thousand only) payable to the Ministry of Corporate Affairs, Government of India since new company is registered with authorized Capital of Rs.25,00,000/- (Rupees Twenty Five Lacs only) they may have to pay registration fee and also to serve as a deterrent for the companies which are negligent in compliance with the provisions of Companies Act.
- iii) Such other order /directions as the Hon'ble Tribunal may deem fit and proper."

He submits ultimately that if the petition is decided on merit to restore it, the Tribunal may accept the prayer subject to the conditions as incorporated in his report.

4. In that connection, I have heard the rival submissions. On considering the facts and submissions having regard to the materials on record including the report of the ROC, N. E, Shillong, the petition is allowed subject to however, with the following conditions: -

- (1) The petitioner will Comply with all statutory provisions of Companies Act, 2013 and file its pending statutory returns as per the Law prescribed within 30 days of this order.
- (2) The petitioner will pay restoration cost of Rs.10,000/- (Rupees Ten Thousand only) payable to the Ministry of Corporate Affairs, Government of India.

5. The application is accordingly disposed of.



Member (Judicial)
National Company Law Tribunal
Guwahati Bench: Guwahati.

Dated, Guwahati the 07th March, 2018

Deka/07-03-2018

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