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**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH**

PRESENT: HON'BLE SHRI RATAKONDA MURALI- MEMBER JUDICIAL

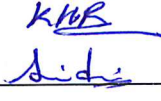
ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 09.10.2018 AT 10.30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	CA No.867/252/HDB/2018
NAME OF THE COMPANY	Jayalakshmi Cements Pvt Ltd
NAME OF THE PETITIONER(S)	Srinivas Rao Vudatha
NAME OF THE RESPONDENT(S)	Registrar of Companies Hyderabad
UNDER SECTION	252

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
D. Visweswar Rao	PCS	9vmas - vikas@kotmud.com 9948313130	

Counsel for Respondent(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
K. Harish Reddy	Advocate	9849296949	

ORDER

Orders pronounced vide separate orders.


Member(Judl)

Pavani

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD**

CA No. 867/252/HDB/2018

U/s 252 of Companies Act, 2013

In the matter of

M/s. Jayalakshmi Cements Private Limited
Regd. Office:
6-4-11 to 19, Flat No.302, B-Block,
Jaya Durga Towers,
Musheerabad X Roads,
Hyderabad.

...Applicant

VERSUS

The Registrar of Companies
Andhra Pradesh & Telangana
2nd Floor, Corporate Bhawan
GSI Post, Tattiannaram, Nagole, Bandlaguda
Hyderabad - 500068

...Respondent

Order pronounced on 09th October, 2018

Coram

Hon'ble Shri Ratakonda Murali, Member (Judicial)

Counsels / parties present:

For the Applicant Company: Shri. A.Visweswara Rao, PCS.


For the Respondent: Shri K.Harish Reddy, CGSC


Per: Hon'ble Shri Ratakonda Murali, Member (Judicial)


Heard on 28.08.2018, 17.09.2018, 27.09.2018, 05.10.2018 and
09.10.2018

ORDER

1. The Applicant Company M/s. Jayalakshmi Cements Private Limited has filed the present Application under Section 252 of the Companies Act, 2013, with a prayer for issuance of directions to the Registrar of Companies, Hyderabad to restore the name of the Applicant Company in the Register of Companies and to pass such order as deemed fit in the circumstances of the case.


2. The averments made in the Company Application are briefly described hereunder:-
- a. The Applicant Company M/s. Jayalakshmi Cements Private Limited, was incorporated under the Companies Act, 1956 on 13th February 2012 vide CIN: U26941TG2012PTC079113, as a Private Company Limited by Shares with the Registrar of Companies, Andhra Pradesh and Telangana having its Registered office situated at: 6-4-11 to 19, Flat No. 302, B - Block, Jaya Durga Towers, Musheerabad X Roads, City: Hyderabad, State : Telangana - 500020.
 - b. The company's main objective is to engage in production and manufacturing of cement. The Memorandum of Association which interalia consists of objects of the company is enclosed as **Annexure 1**.
 - c. The Authorised Share Capital of the Applicant Company is Rs. 1,00,000/- (Rupees One Lakh only) divided into 10,000 number of equity shares of Rs. 10/- (Rupees Ten each) and the Issued, Subscribed & Paid Up Capital of the Company is Rs. 1,00,000 /- (Rupees One Lakh Only) divided into 10,000 number of equity shares of Rs. 10/- (Rupees Ten each). Copy of the Memorandum and Articles of Association of the Company and The Certificate of Incorporation is annexed herewith and marked as **Annexure-1**.
 - d. The Applicant Company avers that the Registrar of Companies, Andhra Pradesh and Telangana at Hyderabad, Vide Notice No. ROC(H)/248(5)/STK-7/2017, Dt: 21.07.2017, read with the grounds as mentioned in Public Notice No. ROC/HYDERABAD/STK-1/Revised, DT: 05.05.2017, with reference to Letter of ROC in Form STK-1, has struck-off the Applicant Company, from the Register of Companies. The Notices DT: 05.05.2017 and 21.07.2017 were placed in the MCA portal.
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- e. It is averred in the Company Application that, the Applicant Company had not filed its statutory returns and other documents since the year of incorporation. In the year 2012 Shri Srinivasa Rao Vudata established Jayalakshmi Cements Private Limited and invested money along with others who, relying upon his expertise, had come forward and invested in this company.
- f. The Applicant Company avers that it has been regular in conducting the meetings both Board Meetings as well as Annual General Meetings. The Company had applied for the lease for mining activities in order to manufacturing cement. The situation was conducive at the time of making application. For the lime stone extraction, the lease was necessary. The company had pursued it. It took a lot of time and finally in the year 2016 the company had received a communication from Departments of Mines and Geology enclosed as **Annexure 3** that the application was rejected. Meanwhile the considerable time and valuable resources of promoter has been lost. There was never any intention to close the business.
- g. The Applicant Company avers that to give a chance to the company, its members and creditors to revive the company which has been struck off by the Registrar of Companies and to give them an opportunity of carrying on the business only after the Hon'ble Tribunal is satisfied that such restoration is necessary in the interests of justice.
- h. The Applicant Company further avers that it has filed an Affidavit, that the company does not have any bank account and accordingly there are no deposits of money at any time. Affidavit filed in connection with cash transactions in the Company during the Demonetization period (08.11.2016 to 30.12.2017), which is shown as Annexure-16.
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- i. The Applicant Company avers that the Non-Filing of the Annual Accounts and Annual Returns, occurred inadvertently and was neither deliberate nor wilful on the part of the Company or any of its officers and was not caused with any intention to adversely affect the interests of any concerned party in this regard, and accordingly, the Strike-off of the Company by the Registrar of Companies is not justified and causes irreparable loss to the Company and all its stakeholders.
 - j. It is further averred that the Applicant Company has enclosed the following documents giving justification / substantiating that the Company has been operational as under:-
 - (1) Certificate of incorporation.
 - (2) Certified copies of memorandum and Articles of Association of the Company
 - (3) Audited Financial Statements for the Financial Years 2012-2013 to 2016-2017.
 - (4) Demonetisation affidavit.
 - k. The Learned PCS for the Applicant Company has stated that the Company has filed its Application within the limits laid down under Section 252 (3) of the Companies Act, 2013.
3. The Registrar of Companies Hyderabad, Respondent herein denied all the averments made in the Application except those which are specifically admitted herein and submitted his report vide memo No. ROCH/ LEGAL/ SEC252/ 079113/JCPL/ MSN(JTA)/2018/ 3416 dated 11.09.2018 stating as follows:-
- A. The Company had defaulted in filing the financial statements and annual returns for more than 2 years and hence the company was identified for strike off u/s 248(1) and STK-1 notice was issued to the company and its directors and STK-5 notice dated 05.05.2017 was issued
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- and the same published in the Government of India Gazette. Newspaper publication was made all the stake holders about the list of companies published in the MCA Website. Finally the company was struck off and STK-7 notice was also published in the Gazette on 19.08.2018.
- B. Respondent/RoC further states that it has no objection if the Tribunal considers the present Application for restoration of the name of the Company back to the Register of Companies U/s 252 of the Companies Act, 2016 subject to such conditions as specified therein.
- C. Respondent/ RoC states that the Tribunal may direct the Applicant Company to ensure statutory compliance under applicable provisions of the Companies Act, 2013 without any delay in future.
- D. Respondent/ RoC states that the petitioner may also be directed to file INC-28 along with a certified copy of the order of the NCLT with the Registrar of Companies within Thirty days from the date of order.
- E. Respondent/ RoC has also urged this Tribunal to direct the Application Company to file a declaration from the Directors of the Company regarding deposit of cash in banks during the demonetization period.
- F. Respondent / RoC further stated that this Tribunal may award cost of the proceedings in favour of RoC and direct the Applicant Company to pay the cost through online payment in www.mca.gov.in.
- G. Section 252 (3) stipulates that

“Section 252(3): If a Company, or any member or creditor or workman thereof 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 workman before the expiry of twenty years from the publication in the Official Gazette of the notice under sub-section(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 register of companies, order the name of the company to be restored to the register of companies, and the Tribunal may, by the order, give such other directions and make such provisions as deemed just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off from the register of companies.”

4. I heard the PCS for the Applicant Company, who contended that, the Applicant Company is doing its business on a going concern basis. Further PCS stated that due to lack of professional guidance, Company could not file the statutory returns on time. He further contended that, the Applicant Company will file necessary financial statements and Annual Returns soon after restoration of the name of the Company with the Registrar of Companies, Hyderabad and prayed the Tribunal to revive this Company.
5. Further, I have seen the latest Balance sheet as on 31st March 2018 of the Applicant Company. The Applicant Company is having Assets (non-current and current) at Rs. 1,00,000/- as on 31.03.2018.
6. After hearing the PCS for the Applicant Company and after perusal of material documents on record, the report of the RoC, Hyderabad and after going through the provisions of Section 252 (3) of the Companies Act, 2013, this Tribunal is of the view that the Company was in existence and it is a going concern and name of Company to be restored in the Register of Companies as maintained by RoC.
7. By exercising the powers conferred on this Tribunal under Section 252 of the Companies Act, 2013, and Rule 87-A of NCLT (Amendment) rules 2017, R/w NCLT Rules, 2016, the Company application bearing CA No.867 /252/HDB/2018 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 and take all consequential actions like change of company's status from 'strike off' to Active (for e-filing), to restore and activate the DINs if applicable, to intimate the bankers about restoration of the name of the company so as to defreeze its accounts.

- 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 30 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 25,000/- (Rupees Twenty five thousand only) through online payment in www.mca.gov.in under miscellaneous fee by mentioning particulars as "payment of cost for revival of company pursuant to orders of Hon'ble NCLT in CA No.867/252/HDB/2018".
- 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, the 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.


9.10.18
RATAKONDA MURALI
MEMBER (JUDICIAL)

Pavani