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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 10.10.2018 AT 10.30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	CA No.853/252/HDB/2018
NAME OF THE COMPANY	Fair Child Laboratories Pvt Ltd
NAME OF THE PETITIONER(S)	M. Venkat Mallikarjun Rao
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
K. PHANI KUNNA	ADVOCATE	KPKUNNA FOR CALAW@NALC.org	K. Phani
		9441407470	

Counsel for Respondent(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
T. Sujan Kumar Reddy	Advocate	9160001435	T. Sujan

ORDER

Orders pronounced vide separate orders


Member(J)

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

CA No. 853/252/HDB/2018
U/s 252 of Companies Act, 2013

In the matter of

Shri. M.VenkataMallikharjuna Rao,
Shareholder of M/s. Fairchild Laboratories Private Limited
R/o. 7-1-71,
DharamKaram Road,
Ameerpet,
Hyderabad- 500 016,
Telangana.

...Applicant

VERSUS

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

...Respondent

Order pronounced on 10th October, 2018

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Hon'ble Shri RatakondaMurali, Member (Judicial)

Counsels / parties present:

For the Applicant Company: Shri. K.Phani Kumar, Advocate.

For the Respondent: Shri Harish Reddy, CGSC

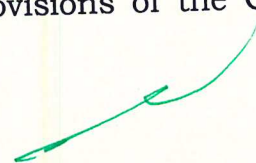
Per: Hon'ble Shri RatakondaMurali, Member (Judicial)

Heard on 20.08.2018, 14.09.2018; 26.09.2018& 10.10.2018

ORDER

1. The Applicant Mr. VenkataMallikharjuna Rao, shareholder of M/s. Fair Child Laboratories 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.

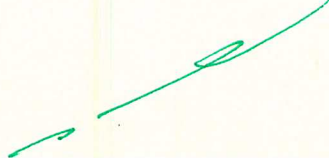
2. The averments made in the Company Application are briefly described hereunder:-
- a. The Applicant Company was incorporated under the Companies Act, 1956 on 13th July, 1983 as a private Limited Company with Registrar of Companies, Andhra Pradesh and Telangana. Its registered address is same as mentioned in the cause title.
 - b. The main objects of the Company are to manufacture, formulate, buy, sell, export, import or otherwise deal in all pharmaceutical formulations for the manufacture of tablets, capsules, oral preparations, ampoules, injectable, vials, Transfusion Liquids and topical preparations.
 - c. The Authorised Share Capital of the Company is Rs.25,00,000/- (Rupees Twenty Five Lakhs only) divided into 25,000 (Twenty Five Thousand) number of equity shares of Rs. 100/- (Rupees Hundred each) and the Issued, Subscribed & Paid Up Capital of the Company is Rs. 21,87,100/- (Rupees Twenty one lakhs eighty seven thousand one hundred only) divided into 21,871 (Twenty one thousand eight hundred seventy one) number of equity shares of Rs. 100/- (Rupees Hundred each)
 - d. The Applicant Company was struck off in the year 2014 under "FAST TRACK EXIT MODE" vide FTE application SRN No. B41630336 dated 21-06-2012 and same was approved on 01-01-2014 for strike off the name of Company from Register of Companies.
 - e. It is averred in the Company Application that the Applicant Company has been active since incorporation and has also been maintaining all the requisite documentation, as per the provisions of the Companies
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Act, 1956. After incorporation the company has started its business operations and continuing the same all the years, accordingly the Company had been filing the yearly returns with the Registrar of Companies upto the Financial Year 2010-11.

- f. It is averred in the Company Application that, the Company had developed some pharma products, which have now created market in India and other Countries.
- g. The Applicant Company avers that unless the present application is allowed and the name of the Company is not restored on the Register of Companies maintained by the Registrar of Companies, the company as well as its shareholders and all other stakeholders shall suffer irreparable loss and hardship and will be highly prejudiced.
- h. 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) Strike off order of the company by ROC.
 - (4) Audited balance sheets for the Financial Years 2008-2009 to 2010-2011.
 - (5) Product purchase enquiry letter of M/s. Meetco(M) SdnBhd to the Applicant.
- i. The Learned Counsel 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 submitted his report vide memo No. ROCH/ LEGAL/

SEC252/ 004034/FLPL/JTAMNR/2018/ 3271, dated 05.09.2018 stating as follows:-

- A. The Applicant Company was struck off in the year 2014 vide FTE application SRN No.B41630336 dated 21.06.2012 and the same was approved on 01.01.2014 for strike off the Company. Hence, the STK-1, STK-5 and STK-7 are not applicable to the present application.
 - B. Respondent 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, 2013 read with rule 87(A) of the NCLT Rule, 2016.
 - C. Respondent 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 further stated that 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 the order.
 - E. Respondent states that the petitioner company was struck off in the year 2014, hence the question of demonetisation affidavit does not arise.
 - F. Respondent 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.
4. The Main Issue for consideration in this Application is whether a Company got strike off voluntarily can seek for restoration of its name or not.
 5. It was the Applicant who approached the RoC seeking to strike off its name from the Register of Companies and on such request of the Company, the RoC was pleased to strike off the name of the Company from the Register of Companies.
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Further, the Company now wants to restore its name and file the present Application for restoration of name of the Company from the Register of Companies.

6. The Applicant relied on the following Judgements of various High Courts in support of his case:

a. In *Purushottamdass and another Vs. Register of Companies Hon'ble Bombay High Court* held at Para 20 of the Judgement as follows:

"The objects of section 560(6) of the Companies Act is 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, within a period of 20 years, and to give them an opportunity of carrying on the business only after the company judge is satisfied that such restoration is necessary in the interests of justice. The company judge may be satisfied that either the company was carrying on its business or was in operation or otherwise, and it is, in the circumstances of the case, equitable and just to restore the company. It, however, does not mean that the rights and liabilities of the company are lost during the interim period, inasmuch as section 560(6) of the Companies Act provides that after an order of restoration is passed, it shall be deemed as if the company was never struck of the register of companies. The section also provides the company judge with wide powers to put certain conditions or directions at the time of ordering the restoration."

b. In *Vi Brij Fiscal Services Private Limited Vs. Register of Companies [2010] 155 Comp Cas 157 (MP) Hon'ble Madhya Pradesh High Court* held at Para 5 of the Judgement as follows:

"It has been averred by the petitioner that the shareholders of the company are now of the opinion that the circumstances leading to closure of activities of the company and non-commencement of business no longer exist and there are

favourable circumstances under which the main business of the company as financial and investment consultant can be restarted in the best interest of the company, its shareholders and other concerned who may be directly or indirectly associated with the business activities of the company. In the circumstances the shareholders of the company took a joint decision and vide consent letter dated May 30, 2009, have decided to revive the company. In the circumstances this petition has been filed under Section 560(6) of the Act seeking a direction to the respondents for restoring the company's name in the Register of Companies." Accordingly the Petition is allowed.

c. In P.K.D. Securities Limited Vs. The Register of Companies, NCLT, Guwahati bench held at Para 51 of the Judgement as follows:

"But then, one must not be oblivious to the fact that the petitioner company had to strike off its name from the Register of Companies under some very compelling circumstances. It is also found that till the date of striking off the name of the petitioner company, it conducted its business strictly in accordance with law and rules framed there under. It is worth noting here that the NCLT Rules 2016 or for that matter the Company (Court) Rules, 1956 require the CLB/Tribunal to impose cost whenever companies etc. are found conducting their business not in accordance with the prescription of law and rules framed there under. In that view of the matter, it would not be proper to impose any cost on the petitioner company on allowing it to be restored to the Register of Companies."

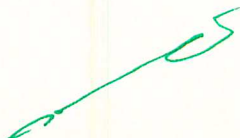
7. I have heard the counsel for the Applicant Company, Counsel for RoC (Hyderabad).
8. The Applicant Company voluntarily got Strike off its name from the Register of Companies on 01.01.2014 because the

petitioner Company was not in a position to carry on business at that time. But due to change in the market conditions, now the Company is going to get some business in future, the Company now wants to get its name restored.

9. Section 252(3) read as follows:

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."

On perusal of Section 252(3) that a Company which is struck off from the Register of Companies does not cease to exist completely on its striking off from the Register of Companies. Therefore, such a Company can be brought back any time before the expiry of 20 years from the date of publication in the Official Gazette by the RoC.


10. The Applicant Company is doing business till the date of striking off its name from the Register of Companies and also filing all the required documents with the RoC.
11. After hearing the Counsel 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 it is just and proper to allow the Application seeking restoration of the Company .
12. By exercising the powers conferred on this Tribunal under Section 252 of the Companies Act, 2013, and Rule 87-A of
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NCLT (Amendment) rules 2017, R/w NCLT Rules, 2016, the Company application bearing CA No.853/252/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 .
- 2) The Applicant company is directed to file all the statutory document(s) if pending 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 5,000/- (Rupees 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.853/252/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.


10.10.18
RATAKONDA MURALI
MEMBER (JUDICIAL)

VISWARAJ(LRA)