

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

Co. Appeal No. 224/252/NCLT/AHM/2018

Coram: **Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER JUDICIAL**
Hon'ble Ms. MANORAMA KUMARI, MEMBER JUDICIAL

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 30.08.2018**

Name of the Company: Amit Narendrakumar Patel
(Kinboshi Danke Resources Pvt Ltd.)
V/s.
Registrar of Companies, Gujarat.

Section of the Companies Act: Section 252 (3) of the Companies Act, 2013

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
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ORDER

None present for the appellant as well as ROC.

The Order is pronounced in the open court, vide separate sheet.

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MANORAMA KUMARI
MEMBER JUDICIAL
Dated this the 30th day of August, 2018

Harihar Prakash Chaturvedi

HARIHAR PRAKASH CHATURVEDI
MEMBER JUDICIAL

**BEFORE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH**

Co. Appeal No. 224/252(3)/NCLT/AHM/2018

In the matter of:

M/s. Kinboshi Danke Resources Private Limited

In the matter between:

1. Mr. Amit Narendrakumar Patel
302, Harsh Complex,
Old Padra Road
VADODARA 390015 : Appellant

Versus

Registrar of Companies,
ROC Bhavan
Opp. Rupal Park
Nr. Ankur Bus Stand
Naranpura
Ahmedabad 380 013 Respondent

Order delivered on 30th August, 2018.

**Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (J)
Hon'ble Ms. Manorama Kumari, Member (J)**

Appearance:

PCS Mr. Devesh Desai is present for the appellant

ORDER

[Per: Hon'ble Ms. Manorama Kumari, Member (Judicial)]

1. By this Appeal, the Company namely, M/s. Kinboshi Danke Resources Private Limited, seeks for restoration of its name in the Register of the ROC. The Registrar of Companies, Ahmedabad, Gujarat ["ROC" for short] by its impugned order dated 21.06.2017 has struck off the name of the company. Being aggrieved with this action the appellant being director/shareholder of the company has prayed for the following relief: -



- (i) **direct the Registrar of Companies, Gujarat to restore the name of the company in the Register of Companies maintained in the office of the Registrar of Companies as its name had not been struck off from the rolls of the Register;**

2. The facts of the present case as narrated in the present appeal, are described as under: -

That M/s. Kinboshi Danke Resources Private Limited was originally incorporated on 21.02.2008 with the Registrar of Companies, Gujarat. It is contended that the Registrar of the Companies vide its Notice No. ROC/AHMD/248(5)/STK-7/PUB/1 dated 21.06.2017 (issued in Form No. STK-7) followed by a final notice issued under sub-section (5) of Section 248 of the Companies Act, 2013, has struck off the name of the Company from its register with effect from 21.06.2017, stating such ground that the Company has failed to file its statutory returns from 31.03.2012 to 31.03.2017 nor it applied within such period to the ROC for obtaining a status of dormant company under the provisions of the Companies Act.

3. On Notice being issued to and order of notice being served upon the ROC, has filed his Representation affidavit dated 25th April, 2018 by denying the allegations made and contentions of the appellant, it has justified its action by saying that the Company has failed to file its statutory returns viz., Balance Sheets and other returns with the ROC from 31.03.2012 to 31.03.2017 and due to such lapses the name of the Company stood struck off.





4. Notwithstanding the above, the ROC, Ahmedabad in same representation has further contended that this court may pass an appropriate order for restoration of the name of the company subject to following conditions: -

- (i) The petitioner will file all the overdue statutory returns viz. Balance sheet and Annual Return for the years which have not been filed and also other event based documents, if any, with fees and additional fees as required under the Companies Act, 2013.**
- (ii) The publication of notice in two leading newspapers circulating in the district official and Gazette of Government of India, in regard to the restoration of the name of the company on the register maintained in the office of the respondent as per the draft approved by the respondent, at the cost of the petitioner.**
- (iii) The petitioner will ensure that the company will not make any default in filing of statutory returns in future as required under the Companies Act, 2013.**
- (iv) The Tribunal may please be direct the petitioner to pay cost as may deem fit and proper to the Registrar of Companies for restoring the name of the company under Section 252 (3) of the Act as the respondent had incurred expenditure on sending notices, publication of notices in newspaper and official gazette in respect of striking off companies.**
- (v) such other order as may be deemed fit and proper by this Tribunal under the circumstances of the case.**

5. The present appellant has filed the present appeal under Section 252(3) of the Companies Act as being a Shareholder/Director of the deregistered company. Hence he is eligible to file the same seeking for restoration of the Company's name in the register of the ROC, Ahmedabad. Hence, the present Appeal is found maintainable. As the name of the Company M/s. Kinboshi Danke Resources Private Limited was struck off on 21.06.2017 from the Register of Companies followed by a publication in the Gazette of India, while the present appeal is filed on 23rd April, 2018. Hence it is filed well within limitation.





6. As per the material available on record, the main reason shown for striking off the name of the Company is that M/s. Kinboshi Danke Resources Private Limited failed to file Annual Returns and Balance Sheets with the Registrar of Companies from 31.03.2012 onwards.
7. A perusal of the contents of the present appeal and documents annexed therewith goes to show that the Company is a going concern and has been doing business. The Registered Office of the Company is situated at 302, Harsh Complex, Old Padra Road, Vadodara 390 015, Gujarat State.
8. The appellant has submitted that the company was incorporated with an object to identify and analyse market trend in India and abroad, economy movement, new resources, avenues, business environment, competitive position and to identify opportunities, joint venture partners, new technologies, its development, its products, process and to provide advice in the field of but not limited to management, finance etc.
9. Learned counsel appearing for the appellant submitted that the promoters of the company want to close the business on compliance of the statutory requirements.
10. Representation of Income Tax Department is received wherein nothing adverse has been reported.

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11. We have gone through the Appeal and the documents annexed thereto. It appears that the Company is not a going Company. The Appellant wants to close the business. However, the appeal is filed by him for restoration in order to enable him to file the required statutory returns MCA, but since the Company's name has already been struck off before the filing of the Application for closure, the Appellant filed this Appeal before this Tribunal.
12. In the context of the issue relating to restoration of the defunct Company's name to the Registrar of Companies and the circumstances in which the Company Court can exercise its power, it is necessary and expedient to refer to the following decision rendered by the Hon'ble High Court of Andhra Pradesh;
13. The Hon'ble Andhra Pradesh High Court in the Judgment delivered in the case of **Velamati Chandrasekhara Janardan Rao (Supra)**, in Para No. 11 has held as follows;

"11. In *M.A. Panjwani v. Registrar of Companies and another*, considered 4 scope of Section 560(6) and the meaning of words 'otherwise just' held as follows;

11. Under sub-section (6) of Section 560 of the Companies Act, 1956 the company court has the power to order restoration of the company's name to the registrar of companies on the application made by the company itself or its member or creditor. Such an application can be made at any time before the expiry of 20 years from the publication of the notice for striking off the name published in the official gazette. There are only two circumstances in which the company court can exercise the power. The first is when it is satisfied that the company was, at the time of striking off its name from the register, carrying on business or was in operation. The second circumstance is when it appears to the company court that it is "otherwise just" that the name of the company restored to the register. Obviously petitioner is not the company itself therefore, he has to be either a

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member creditor. It was submitted on behalf of ROC that the petitioner is neither member nor a creditor of the company.

14. Quite apart from the above position, the sub-section recognises that if the Court is of opinion that it is "otherwise just" that the company be restored to the register, restoration can be ordered. The argument addressed on behalf of the ROC to the effect that the word "just" has to be understood in the background of the specific language of the sub-section on the basis of the principle of *eiusdem generis* does not appeal to me. As I read the sub-section, there are two situations in which the company court can order restoration. One is when the company was carrying on business or was in operation at the time of striking off its name. The second situation, which is an alternative situation, is one where it appears "just" to the company court that the name of the company be restored to the register. I do not see any scope for the application of the rule of *eiusdem generis* because of the presence of the words "or otherwise" between the words providing for the two types of situations. The presence of the words "or otherwise" denotes that even if the company was not carrying on any business or was not in operation at the time of striking off, it is still open to the company court to order restoration if it appears to the Court to be "otherwise just". I may add that the words "or otherwise" have not been generally construed *eiusdem generis* as seen from the judgments of the Supreme Court in *Lilawati Bai v. State of Bombay*: (AIR 1957 SC 521) and *Kavatlappara Kottarathil Kochuni v. State of Madras*: (AIR 1960 SC 1080).

15. In *Helen C. Rebella v. Maharashtra S.R.T.C.*: (1999) 1 SCC 90, it was observed by the Supreme Court that the word "just" denotes equitability, fairness and reasonableness having a large peripheral field. In understanding its scope, one must take into account all the facts and circumstances of the case and then decide what would be just and equitable. In *M.A. Rahim and another v. Sayari Bai*: (AIR 1973 Mad.83) it was held by a Division Bench of the Madras High Court that the word "just" connotes reasonableness and something conforming to rectitude and justice, something equitable and fair. In *Sidhant Garg and another v. Registrar of Companies and others*: (2012) 171 Comp.Cas.326 it was held by this Court (Manmohan, J.) that the word "just" would mean that it is fair and prudent from a commercial point of view to restore the company and that the Court has to examine the concept of "justness" not exclusively from the perspective of a creditor or a member or a debtor, but from the perspective of the society as a whole. The special facts of the present case attract this principle. The respondent has received

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monies from the petitioner. He was entrusted with the job of finding a house for the petitioner in Delhi. The averments in the petition prima facie indicate that the property "Jodhpur Gardens" was purchased not in the name of the petitioner but in the name of the company. The shares held by the petitioner in the company were also taken away from him without his knowledge or consent. The settlement entered into between Quli and Singhania by which the shares were transferred to Quli was held by this Court to be collusive. These are disputes which are pending in the trial court. The company is a defendant in the trial court. If its name is not restored, it would cause injustice to the petitioner and also cause prejudice to the trial as a whole. The message sent to the society as a whole, if the name of the company is not restored to the register, would be quite disturbing. The petitioner has to be protected in the litigation pending before the trial court. As observed by the Indore Bench of the Madhya Bharat High Court in Bhogi Lai Chimun Lai v. Registrar, Joint Stock Companies: AIR 1954 M.B. 70, the effect of the order of the Registrar of Companies striking off the name of the company from the register would be that the company will be deemed to be dissolved and it may be difficult for the petitioner to obtain any relief in the suit pending before the trial court. It is not also known whether the company had brought to the notice of the ROC about the pendency of the litigation in the trial court. If it had, perhaps the ROC would not have struck off the name from the register."


14. Considering all the aforesaid aspects, this Tribunal is of the considered view that it is just and equitable to restore the name of the Company, M/s. Kinboshi Danke Resources Private Limited in the Register of Companies maintained by the ROC, Gwalior, Madhya Pradesh.
15. In view of the above, this Appeal is allowed. The Registrar of Companies, Gwalior, Madhya Pradesh is directed to restore the name of the Company, M/s. Kinboshi Danke Resources Private Limited, to the Register of Companies upon the Appellant's complying with the following conditions;

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- (i) The Appellant shall file all over due statutory returns with fee and additional fee as required under the Companies Act;
- (ii) The Appellant shall publish a Notice in leading newspapers circulating in the District as well as in the Official Gazette of the Government of India with regard to the restoration of the name of the Company in the Register of Companies maintained by the Office of the Registrar of Companies, as per the draft notice approved by the Registrar of Companies at the expenses of the Appellant;
- (iii) The Appellant shall also pay an amount of Rs. 25,000/- to the Ministry of Corporate Affairs by way of Demand Draft drawn on Nationalised Bank towards the cost incurred by the Government in striking off the name of the Company within 3 (three) weeks from the date of receipt of authentic copy of this order.

16. The Appeal stands disposed of accordingly.


Ms. Manorama Kumari
Member (Judicial)


Harihar Prakash Chaturvedi
Member (Judicial)