

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

Co. Appeal No. 257/252(3)/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 24.08.2018**

Name of the Company: Prashant Bipinbhai Thakore & Anr.
(MGD Marketing Pvt Ltd)
V/s.
ROC, 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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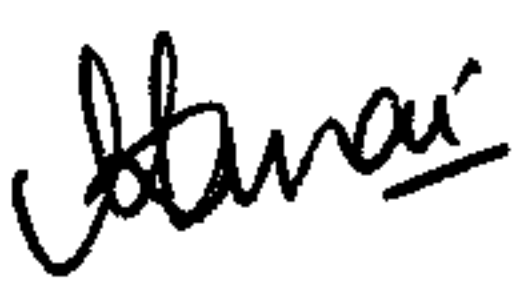
1.

2.

ORDER

None appeared for the appellant as well as ROC.

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


MANORAMA KUMARI
MEMBER JUDICIAL


HARIHAR PRAKASH CHATURVEDI
MEMBER JUDICIAL

Dated this the 24th day of August, 2018

**BEFORE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH**

Co. Appeal No. 257/252/NCLT/AHM/2018

In the matter of:

M/s. MGD Marketing Private Limited

In the matter between:

1. Prashant Thakor,
S/o Bipin Thakor
187/3, Gujarat Society,
Chandlodia,
Ahmedabad 382 481,
Gujarat, India : Appellant No. 1

2. Mr. Dhaval Prabhulal Kasundra
S/o Prabhulal Kasundra
401, 4th floor, Hirapanna Apts,
Bhuyapar, Opp. Bopal Tube well,
Bopal,
Ahmedabad 380 058
Gujarat. : Appellant No. 2

Versus

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

Order delivered on 24 August, 2018.

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

Appearance:

PCA Mr. Jignesh Pujara, is present for the appellants.
None for the ROC.



ORDER

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

1. By this Appeal, the Company namely, M/s. MGD Marketing 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 appellants being directors/shareholders of the company have prayed for the following reliefs: -

- (i) That the Hon'ble Bench of the National Company Law Tribunal may order respondent to restore name of the Company in Register of Registrar of Companies, Ahmedabad, Gujarat.**
- (ii) To pass an appropriate order under Section 252(3) of the Companies Act, 2013, to bring an end to status of defunct company in matter i.e. M/s MGD Marketing Private Limited. Be pleased to allow exemption to file annual returns required to be filed and to pay filing fees thereon for the year 2009 to 2017.**
- (iii) That such order and or other further relief as the Hon'ble bench of the National Company Law Tribunal deems fit and proper in the interest of justice.**

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

That M/s. MGD Marketing Private Limited was originally incorporated on 04.09.2009 with the Registrar of Companies, Gujarat. It is contended that the Registrar of the Companies vide its notice dated 25.04.2017 and final notice dated 21.06.2017 issued under Sec. 248 in form No. STK-7 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 such as Financial Statements and Annual Returns since incorporation 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 22nd June, 2018 by denying the allegations made and contentions of the appellants, it has justified its action by saying that the Company has failed to file its statutory returns viz., Financial Statements and Annual returns with the ROC since incorporation of the Company. 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 petitioners will file all the overdue statutory returns viz. financial statements and Annual Returns 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 and official 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 petitioners.**
- (iii) The petitioners 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 Hon'ble Tribunal may please be direct the petitioners to pay cost as may be deemed fit and proper to the Registrar of Companies for restoring the name of the company under Section 252 (3) of the Act as the**


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[Signature]

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 Hon'ble Tribunal under the circumstances of the case.*

5. The present appellants have filed the present appeal under Section 252(3) of the Companies Act as being a Shareholders/Directors of the company. Hence they are 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. MGD Marketing Private Limited, was struck off on 21.06.2017 from the Register of Companies, while the present appeal is filed on 25th June, 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, M/s. MGD Marketing Private Limited is that it failed to file Annual Returns and financial statements with the Registrar of Companies since incorporation of the Company.
7. A perusal of the contents of the present appeal and documents annexed therewith goes to show that the Company has not been carrying on any business or operation since its incorporation and the Company wants to close the company filing the required documents before the MCA, but the Company's name has been struck off before the filing of the application for closure. The Registered Office of the Company is situated at 201, Chase House,



Shital Baug Society, Nr. Sardar Patel Colony, Navrangpura,
Ahmedabad-380 006, Gujarat State.

8. The appellants have submitted that the company was incorporated on 04.09.2009 with an object to carry on the business as traders, agents, stockiest, distributors, indenters, importers, exporters, buying and selling agents, manufacturers', representatives, commission agents, clearing and forwarding agent, general brokers, market man, market developers, research and development in the field of marketing and selling, promoters, organizers and retailers of all type of goods commodities used in industrial and or domestic purpose etc.
9. The appellants have submitted an affidavit to the effect that their company is not a shell company and that the promoters of the Company are willing to run the Company for the purpose, it was incorporated.
10. No representation is received from the Income Tax Department inspite of issuing notice.
11. 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. MGD Marketing Private Limited in the Register of Companies maintained by the ROC, Ahmedabad, Gujarat, and to remove the defects of disqualification, if any, under the provisions of the Companies Act, 2013.





12. In view of the above, the instant Appeal is allowed in terms of its relief clause. Consequently, the Registrar of Companies, Ahmedabad, Gujarat, is directed to restore the name of the Company in the Register of Companies but subject to the following conditions complied by the appellants: -

- (i) The Appellants shall file all over due statutory returns with fee and additional fee as required under the Companies Act; and other laws within stipulated period stated therein, or within 90 days from the receipt of an authentic copy of this order and after restoration of its name in the Register of ROC, Ahmedabad.
- (ii) The Appellants 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 Appellants shall also pay cost for an amount of Rs. 25,000/- payable to the Central Government, Ministry of Corporate Affairs through Office of the

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[Signature]

ROC, Gujarat 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 an authentic copy of this order and shall file compliance.

13. Accordingly the appeal is allowed and stands disposed of.



**Ms. Manorama Kumari,
Member (Judicial)**



**Harihar Prakash Chaturvedi,
Member (Judicial)**