

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

C.P. No.28/BB/2021
U/s 252(3) of the Companies Act, 2013 &
Rule 87A of the NCLT Rules, 2016

In the matter of:

D B Rajanna

An Authorised Representative of
Indra Housing Finance Corporation Limited
Reg. Off: Dandinasivara Postge,
Tumkur District,
Karnataka.

- Applicant / Petitioner

Versus

The Registrar of Companies, Karnataka

'E' Wing, 2nd Floor,
Kendriya Sadan, Koramangala,
Bengaluru - 560 034.

- Respondent

Order delivered on: 30 July, 2021

Coram:

1. Hon'ble Shri Bhaskara Pantula Mohan, Acting President
2. Hon'ble Shri Hemant Kumar Sarangi, Member (Technical)

Parties/Counsels Present (Through Video Conference):

For the Petitioner : Ms. Shashikala Hemanth, PCS

For the Respondent : None present

ORDER

Per: *Bhaskara Pantula Mohan, Acting President*

1. This Petition has been filed by Mr. D.B. Rajanna, Shareholder cum Director of M/s. Indra Housing Finance Corporation Limited (hereinafter referred as 'Applicant / Petitioner') U/s. 252(3) of the Companies Act, 2013 and Rule 87A of the National Company Law Tribunal Rules, 2016, by *inter alia* seeking to direct the Respondent to restore the name of the Company in the Register of the Companies and also to direct the Respondent to allow the Company to file pending balance sheets and annual return forms, etc.



2. Brief facts of the case, as mentioned in the Company Petition, which are relevant to the issue in question, are as follows:

- (1) M/s. Indra Housing Finance Corporation Limited (hereinafter referred as 'the Company') was incorporated under the Companies Act, 1956, on 20.12.1991, vide CIN: U65922KA1991PLC012646, with the Registrar of Companies, Karnataka. Its registered office is situated at Dandinasivara Postge, Tumkur District, Karnataka. Its Authorized Share Capital as per Master Data of MCA website is Rs.5,00,00,000/- (Rupees Five Crores only) and the Paid Up Share Capital is Rs.5,00,00,000/- (Rupees Five Crores only). Its main objects *inter alia* are to carry on the business of providing long term finance to any person or persons, company or corporation, society or association of persons with or without interest and with or without any security for the purpose of enabling such borrower to construct / purchase any house, etc.
- (2) It is stated that the Company was incorporated on 20.12.1991 with the Paid-up Capital of Rs.40,000/- (Rupees Forty Thousand only) and then commenced its operations. The Company received a notice from the ROC, Karnataka, in Form No.STK-1, stating that the ROC has reasonable cause to believe that the Company has not been carrying on any business or operation for a period of two immediately preceding financial years and have not made any application within such period for obtaining the status of dormant Company u/s. 455.
- (3) Having understood that the aforesaid notice has been sent because of non-fillings of Balance Sheet and Annual Returns, it is stated that the Company is doing its business as a going concern basis and due to some managerial issues and Directors of the Company being unaware of the provisions of the Companies Act, 1956 and Companies Act, 2013, were not able to file / submit the Balance Sheet and Annual Returns for preceding four Financial Years.
- (4) It is also submitted that the Company was in the process of filing of its pending Balance Sheet and Annual Return with ROC after receipt of Form STK-1. In the meantime, it received another notice from ROC,



Karnataka, in Form No.STK-5 and Form No.STK-7, stating that pursuant to the notice dated 09.08.2019 and 14.08.2019, the name of the Company has been struck off from the Registrar of Companies and the Company has been dissolved.

- (5) Further, the Company has been actively carrying on business since Incorporation. However, the Company had not carried out any activities due to managerial and financial issues from 2015 to 2019. Presently, Directors and Shareholders are keen to enter into activities under Global Depository Receipts and avail the facilities to continue the business operations and the Company is in the process of granting Housing Finance to its customers.
 - (6) The Directors-cum-Shareholders of the Company vide respective Affidavits dated 19.12.2020 have affirmed that the Company shall file all the overdue Balance Sheet and Annual Returns within 30 days upon restoration of the Company by the Tribunal and also stated that no abnormal amount has been deposited into the Company's bank account during demonetization period i.e. September 2016 to January 2017 and no Income Tax notice has been served on the Company in this connection. Further, the Audited Financial Statements pertaining to the Financial Years 2015-16 to 2018-19, have been placed on record at Annexure-A to the Petition.
 - (7) In view of the aforesaid facts, the Company seeks an order for restoration of the name of the Company with the Registrar of Companies and also at the MCA website.
3. The Registrar of Companies, Karnataka, has filed a Counter by way of Affidavit dated 09.04.2021. He has not opposed the Petition. Apart from what has already been mentioned in the Company Petition, he has further stated, *inter alia*, as follows:
- (1) Due to non-filing of the Balance Sheets and the Annual Returns from the Financial Year 2015-16 onwards, the ROC, Karnataka, has issued a



notice in Form No.STK-5 which was sent to the Company and its Directors.

- (2) Since no cause was shown either to the physical notices or to the website, Gazette and newspaper notices either by the Company or its Directors, and also since no Balance Sheet or Annual Return was filed by the Petitioner Company till 21.06.2017, the Respondent proceeded to strike off the name of the Company from the Register of Companies and published a Notice in STK-7 in the Official Gazette on 09.11.2019 stating that from 24.10.2019 names of the Companies mentioned therein including the Petitioner Company have been struck off from the Register of Companies as per Section 248(5) of the Companies Act, 2013.
- (3) It is declared that there is no inquiry, investigation and complaints against this Company and expressed no objection to restore the name of Company, as prayed for, however, subject to payment of costs and complying with outstanding statutory documents.
4. Heard Ms. Shashikala Hemanth, learned PCS for the Applicant / Petitioner through Video Conferencing. We have carefully perused the pleadings of the Party and extant provisions of the Companies Act, 2013, and the Rules made thereunder.
5. Reiterating the facts as submitted with the Petition, Ms. Shashikala Hemanth, learned PCS for the Petitioner submitted that the Company has been actively carrying on business since incorporation. However, Company had not carried out any activities due to managerial and financial issues from 2015 to 2019 and presently, the Directors and Shareholders are keenly interested to enter into activities under Global Depository Receipts and avail the facilities to continue the business operations and that the Company is in the process of granting Housing Finance to its customers. Further, the non-filing of outstanding statutory documents in question was neither intentional nor deliberate but due to being unaware of the provisions of the Companies Act. Therefore, the Tribunal may consider the matter



sympathetically to restore the name of the Company as prayed for, in the interest of justice.

6. It is not in dispute that the Registrar of Companies is conferred with power U/s. 248(3) to strike off the Company, if the Company has failed to commence its business within one year of its incorporation or a Company is not carrying on any business or operation for a period of two immediately preceding financial years and has not made any Application within such period for obtaining the status of a dormant Company U/s. 455. However, Section 248(6) states that the Registrar of Companies, before finally striking off Company, has to satisfy himself that sufficient provision has been made for the realization of all amounts due to the Company and for the payment or discharge of its liabilities and obligations by the Company within a reasonable time, and, if necessary, obtain necessary undertakings from the Managing Director, Director or other persons in charge of the management of the Company.
7. Though, the impugned order striking off the Company was in accordance with law, the Tribunal has to take into consideration the bonafide contentions of Petitioner seeking to restore the name of Company, by taking a lenient view of the issue in the interest of justice and ease of doing business, instead of rigidly interpreting the law on the issue. It is also not in dispute that the instant Company Petition is filed in accordance with law; there are no investigations pending against the Company; the Respondent has not opposed the Petition and has left the issue to the Tribunal to consider the case subject to certain terms and conditions.
8. Striking of its name would affect the business and cause hardship and financial loss to the stakeholders. No prejudice would be caused to any party if the Company's name is restored, as prayed. The Members of the Company have undertaken that post restoration of the Company in the Register of the Registrar of Companies, Bangalore, the Company will complete the Annual filings due for the past years and carry on the business in its ordinary course. Therefore, we are of the considered view that the



interest of justice would be met if the name of Company is restored as prayed for, subject to conditions mentioned below.

9. Hence, by exercising the powers conferred upon this Tribunal, U/s. 252 (3) of the Companies Act, 2013, and following the principle of ease of doing business, **C.P. No.28/BB/2021** is hereby disposed of with the following directions:
- a. The Registrar of Companies, Karnataka, the Respondent herein, is directed to restore the name of the Company in the Register maintained by the Registrar of Companies, Karnataka as if its name had not been struck off from the rolls of the Register, with restoration of all consequential action taken by Registrar of Companies._
 - b. The Petitioner is also directed to get No Objection Certificate from RBI / NHB for revival of this Housing Finance Corporation Company and to carry on the business.
 - c. The Company is directed to file all the due statutory document(s) along with prescribed fees/additional fee/fine as decided by the Registrar of Companies **within 30 days** from the date on which its name is restored on the Register of Companies maintained by the ROC;
 - d. The Company's representative, who has filed the Company Petition, is directed to personally ensure compliance of this Order;
 - e. The restoration of the Company's name is also subject to the payment of costs of **Rs. 1,00,000/- (Rupees One Lakh only)** to be paid online to the account of Central Government in favour of the '*Pay & Accounts Officer, Ministry of Corporate Affairs, Southern Region, Chennai*', within three weeks from the date of receipt of this order, failing which the order will lapse;
 - f. The Petitioner is permitted to deliver a certified copy of this order to the Registrar of Companies;



- g. On such delivery and after duly complying with above directions, the Registrar of Companies, Bengaluru is directed to, on his office name and seal, publish the order in the official Gazette;
- h. This order is confined to the violations, which ultimately led to the impugned action of striking off the Company, and it will not come in the way of Registrar of Companies to take appropriate action(s) in accordance with law, for any other violations / offences, if any, committed by the Company prior or during the striking off the Company;
- i. The Company is directed to resume its business operations as expeditiously as possible, after the name of Company is restored, in terms of this order.



HEMANT KUMAR SARANGI
MEMBER, TECHNICAL



BHASKARA PANTULA MOHAN
ACTING PRESIDENT