

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH**

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PRESENT: HON'BLE SHRI RATAKONDA MURALI- MEMBER JUDICIAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 07.09.2018 AT 10.30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	CA No.833/252/HDB/2018
NAME OF THE COMPANY	Sai Arush Infra Projects Pvt Ltd
NAME OF THE PETITIONER(S)	Venkata Nageswara 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

Counsel for Respondent(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

ORDER

Orders issued vide separate orders.


Member(Judl)

Pavani

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD

CA NO. 833/252/HDB/2018
U/s 252 of the Companies Act, 2013

In the Matter Sai Arush Infra Projects Private Limited

Mr. Venkata Nageswara Rao Nadella
Shareholder of Sai Arush Infra Projects Private Limited
D.No:-59-10-5, Gayatri Nagar, Vijayawada,
Andhra Pradesh- 520008

...Applicant

VERSUS

The Registrar of Companies, Andhra Pradesh &
Telangana, 2nd Floor, Corporate Bhavan
Bandlaguda, Nagole, Hyderabad- 500068

...Respondent

Date of order: 07.09.2018

Coram:

Hon'ble Shri Ratakonda Murali, Member (Judicial)

Parties / Counsels Present:

For the Applicant: Shri M.B.Suneel, PCS.

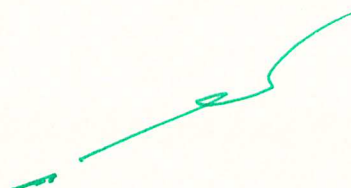
For the Respondent: Shri T. Sujan Kumar Reddy, CGSC along
with Ms. G. Suma, Advocate

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


Heard on: 03.08.2018, 27.08.2018 and 06.09.2018.

ORDER

1. The Applicant Mr. Venkata Nageswara Rao Nadella, Shareholder of **M/s Sai Arush Infra Projects Private Limited (herein referred to as Company)** 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 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 Company was incorporated under the Companies Act, 1956 on 16.12.2010 as a private Limited Company with Registrar of Companies, Andhra Pradesh and Telangana. The Registered Office situated at situated at 59-10-5, Gayathrinagar, Vijayawada, Andhra Pradesh-520008.
 - b. The main objects of the company is to act as developers, builders, constructors, architects, contractors, maintainers, decorators, interior, designers, engineers, dealers, agents, sellers, purchasers, colonizers, managers of shopping complexes and malls, office complexes, townships, industrial, etc.. Other immovable properties and various real estate projects including the business as contractors in any branch and providing financial, consulting and advisory services related thereto. The Memorandum and Articles of Association of the Applicant Company is enclosed hereto as Annexure – A1.
 - c. The Authorised Share Capital of the Company is Rs. 1,00,00,000/- (Rupees One Crore Only) divided into 10,00,000 (Ten Lakhs) Equity Shares of Rs. 10/- each. The issued, subscribed and paid-up capital of the Company is Rs. 1,00,000/- (Rupees One Lakh only) divided into 10,000 (Ten Thousand) Equity Shares of Rs. 10/- each.
 - d. It is averred in the Application that a show cause notice in STK-1 was issued to the Company and the directors of the company by the Registrar of Companies, Hyderabad under section 248(1) of the Companies Act, 2013 stating as under:
 - a. that the Company has failed to commence its business within one year of its incorporation; or
 - b. the Company is not carrying on any business or operation for a period of two immediately preceding
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financial years and has not made any application within such period for obtaining status of Dormant Company under section 455;


- e. The Applicant company avers that the Company has not filed its Annual Returns and the Financial Statements for the Financial Years 2010–11, 2011–12, 2012–13, 2013–14, 2014–15, 2015–16 and 2016–17 within the time prescribed under Section 92 and Section 137 read with Section 403 of the Companies Act, 2013 and could not file financial statements for the Financial Year 2015–16 before the date of strike off. The non-filing of Annual Returns and financial statements is only due to an inadvertent and accidental oversight.
 - f. The Applicant avers that the Company is regular in conducting its Annual General Meetings. It has failed to file the Annual Returns and the Balance Sheets with the Registrar of Companies, Andhra Pradesh & Telangana for the Financial Years 2010–11, 2011–12, 2012–13, 2013–14 and 2014–15 as required under Section 92 & 137 of the Companies Act, 2013.
 - g. The Applicant is a director of M/s. Sri Sai Balaji Spintex (India) Private Limited which is actively carrying on the business of manufacturing of Cotton Yarn and other related products. The company is having a turnover of Rs. 96.56 Cr for the F.Y. 2016–17 and in which a huge number of public interest is involved.
 - h. The Applicant further avers that the applicants are disqualified as Directors in the Company, which is a struck off Company, the applicants will be unable to avail the benefits under the Condonation of Delay Scheme (CODS), 2018 made available by Ministry of Corporate Affairs for disqualified Directors and consequently will not be able to act as Director in any other company for a period of Five years.
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- i. It is averred that the Company was actually incorporated to start the Infrastructure activities. Further, due to the global economic slowdown in the field of infrastructure, at the time of incorporation, the company was not carrying on its main objects actively. However, at present the applicant intends to tap the blooming economic opportunities in the field of infrastructure in the State of Andhra Pradesh and revive its activities.
 - j. It is averred that, unless an order is made as sought for, the Applicant and the Company will suffer irreparable loss and hardship. It is further submitted that in case the present appeal is allowed, the same would be serving public interest as in view of the fact that there are direct employees and indirect employees engaged with the Company who are all the bread winners to their respective families.
 - k. It is further averred that the Applicant has enclosed the following documents giving justification / substantiating that the Company has been operational as under:-
 - (1) Certificate of incorporation.
 - (2) Copy of Memorandum and Articles of Association of the Company.
 - (3) Certified copies of Financial Statements and Bank Statements for the financial years 2010-11 to 2016-17.
 - (4) Demonetisation period affidavit has been filed.
1. The Learned PCS for the Applicant has stated that the Company has filed its Application within the limits laid down under Section 252 of the Companies Act, 2013.
 3. The Registrar of Companies Hyderabad 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/ 071710/ SAIPPL/ MSN(JTA)/2018/ 3268 dated 05.09.2018 stating as follows:

- a. The Company did not file the annual accounts and annual returns since incorporation, 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 and published in the Gazette and a paper publication was also issued informing all the stake holders about STK-5 notice published in MCA website. There after Company was marked strike off in MCA Portal and STK-7 notice was also published in the Gazette on 19.08.2017.
- b. The Respondent 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. The Respondent states that the Tribunal may direct the Company to ensure statutory compliance under applicable provisions of the Companies Act, 2013 without any delay in future.
- d. The Respondent has also urged this Tribunal to direct the Company to file a declaration from the Directors of the Company regarding deposit of cash in banks during the demonetization period.
- e. The 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.

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 accidental oversight, they could not file the statutory returns on time. PCS 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 2017 of the Applicant Company. The Applicant Company is having Assets (current assets and Non-Current Assets) at Rs. 12,374/- and the Revenue from operations is at Rs. 3,64,500/- as on 31.03.2017.
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.851/252/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 55,000/-(Rupees Fifty 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.851/252/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.



- 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.


7-9-18
RATAKONDA MURALI
MEMBER (JUDICIAL)