

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH**

(29)

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.851/252/HDB/2018
NAME OF THE COMPANY	Prasad Sivani Agro Farms Pvt Ltd
NAME OF THE PETITIONER(S)	Prasad Sivani Agro Farms Pvt Ltd
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
K. Harish Reddy	Advocate	90520114366	KHR Hid

ORDER

Orders issued vide separate orders.


Member(Judl)

Pavani

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

CA No. 851/252/HDB/2018
U/s 252 of Companies Act, 2013

In the matter of

M/s. Prasad Sivani Agro Farms Private Limited
D.No.25-1-18, J.K.Puram,
Rajahmundry - 5331033,
East Godavari Dist,
Andhra Pradesh.

...Applicant

VERSUS

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

...Respondent

Order pronounced on 07th September, 2018

Coram

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

Heard on 20.08.2018 & 06.09.2018.

ORDER

1. The Applicant Company M/s. Prasad Sivani Agro Farms 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 09th Sep, 1996 vide CIN: U01110AP1996PTC025163 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 Applicant Company are to carry on the business of cultivating, ploughing, tilling, growing, harvesting, reaping, nurturing, and trading of plants, crops, nurseries, seeds, fruits, botanical plants, trees, shrubs, herbs, creepers, vegetables and leaves. Copies of the Memorandum of Association and Articles of Association of the Applicant Company are herewith submitted as Annexure-B.
 - c. The Authorised Share Capital of the Company is Rs.20,00,000/- (Rupees Twenty Lakh only) divided into 20,000 (Twenty Thousand) number of equity shares of Rs. 100/- (Rupees Hundred each) and the Issued, Subscribed & Paid Up Capital of the Company is Rs. 14,49,200/- (Rupees Fourteen Lakh and Forty nine thousand and Two Hundred only) divided into 14,492 (Fourteen Thousand Four Hundred and ninety two) number of equity shares of Rs. 100/- (Rupees Hundred each)
 - d. The Applicant Company avers that the Registrar of Companies, Andhra Pradesh and Telangana at Hyderabad, Vide Notice No. ROC(H)/248(5)/STK-7/2017, Dt: 21.07.2017, read with the grounds as mentioned in Public Notice No. ROC/HYDERABAD/STK-1/Revised, DT: 05.05.2017, with reference to Letter of ROC in Form STK-1, has struck-off the Applicant Company, from the Register of Companies. The Notices DT: 05.05.2017 and 21.07.2017 were placed in the MCA portal.
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- 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 Act, 1956/2013. After incorporation the company has started its business operations and continuing the same all these years. Accordingly the Company has been filing the yearly returns with Income Tax Department.
- f. The Applicant Company avers that being a small company it has no full time company secretary nor full time chartered accountant to comply with all regular compliances under Companies Act 1956 / 2013 as the case may be, and due to lack of guidance the company could not file the balance sheets and annual returns for the financial years 2005 - 06 to 2016 -17.
- g. The Applicant Company avers that it has been carrying Agricultural activities and company has earned nominal income i.e., through sale of Agriculture produce every financial year. It also avers that the present application may be allowed, since the Company is carrying on its Business and operation and in the event of revival of the Company and restoration of the name of the Company in the Register maintained by the Respondent, the Company shall file all outstanding statutory documents i.e. the financial statement & annual returns for the period from 2005 -06 to 2016 - 17 along with the filing fees and the additional fee, as applicable on the date of actual filing and the certified copy of order of the Tribunal for the restoration of the name of the Company to the Register maintained by the Respondent.
- h. The Applicant Company further avers that it has filed an Affidavit, in connection with cash transactions in the Company during the Demonetization period (08.11.2016 to 30.12.2017).
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- i. 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.
- j. 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) Audited balance sheets for the Financial Years 2005-2006 to 2016-2017.
 - (4) Demonetisation Affidavit.
 - (5) Board Resolution.
 - (6) Bank statements.
- k. 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 herein 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/ 025163/PSAFPL/MNR(JTA)/2018/ 3270, dated 05.09.2018 stating as follows:-
- A. The Company did not file the annual accounts and annual returns from the date of 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, STK 5-A was also published in Andhra Jyothi in Telugu language and New Indian Express newspaper in English language on 15.05.2017 calling for objections from all stake holders. As there was no objections received in respect of the Applicant Company, it was marked strike off in MCA Portal and STK-7 notice was also published in the Gazette on 19.08.2017.


- 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, 2016 subject to such conditions as specified therein.
- 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 has also urged this Tribunal to direct the Applicant Company to file a declaration from the Directors of the Company regarding deposit of cash in banks during the demonetization period.
- E. 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.
- F. 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 counsel for the Applicant Company, who contended that, the Applicant Company is doing its business on a going concern basis. Further counsel stated that due to lack of professional guidance, company could not file the statutory returns on time. Counsel 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 2016 of the Applicant Company. The Applicant Company is having Assets (current assets and Non-Current Assets) at Rs. 29,55,884/- and the Revenue from operations is at Rs. 65,100/- as on 31.03.2016.
6. 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 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.
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- 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.


7.9.18
RATAKONDA MURALI
MEMBER (JUDICIAL)