

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

CP No.: 1267/252/NCLT/MB/MAH/2018

Under section 252 of the Companies Act, 2013

In the matter of

Altius Buildcon Private Limited,

B/3, Prarthana Star Building, Andheri Sahar

Road, Andheri East, Mumbai-400069

Through its Director

Shailesh Dilipbhai Shah

....Petitioner

v.

Registrar of Companies, Mumbai

..... Respondent

Date of Hearing: 28.09.2018

Order delivered on: 03.10.2018

Coram :

Hon'ble M. K. Shrawat, Member (J)

For the Petitioner :

Manish Mishra, Practising Company Secretary i/b Mishra & Associates.

For the Respondent :

None Present.

Per : M. K. Shrawat, Member (J)

ORDER

1. This present petition/application has been filed on 19.04.2018 under Section 252 of the Companies Act, 2013 (hereinafter as **Act**) by the Director of "Altius Buildcon Private Limited" (hereinafter as **Company**) praying for restoration of Company's name in the Register maintained by the Registrar of Companies, Mumbai (hereinafter as **RoC**).
2. The Company was incorporated with the RoC, Mumbai on 17.07.2008 having CIN : U45200MH2008PTC184761.
3. The name of the Petitioner Company was struck off from the Register on account of the reasons that, the Company is not carrying on any business and that there was no business operation for a period of last two financial years and have not made any application within such period for obtaining the status of Dormant Company under S. 455 of the Act. Consequentially, the RoC has published a public notice for Striking off and Dissolution of Company vide STK – 7 dated 10.07.2017.

Submissions from the Petitioners:

4. The Learned Representative for the Petitioner submits that the Company is into the business of Real estate sector and is not a running concern since there is no revenue generation in the year 2017. Further, the Company has not made any application for obtaining the status of Dormant Company under S. 455 of the Act. Further that, the Petitioner Company had never in the past, on its own, moved any application for Strike-off under S. 248 (2) of the Companies Act, 2013.
5. The Company could not file the required Financial Statements with RoC inadvertently since 2011-12 till date due to the bad market conditions.. The Promoters and Directors of the company do not have any mala-fide intent for non-filing.
6. The Learned Representative further submitted that, the Petitioner Company now has all the remaining documents ready and prepared and is willing to file the same before the RoC, if so permitted. Further the Petitioner Company is willing to file any other necessary document which are required by the RoC.

Submissions from the Respondent/RoC:

7. The RoC has forwarded its report stating therein that, the RoC has issued the notice in Form STK – 1 to the Petitioner Company on the ground that, the Company is not carrying on any business and that there was no business operation for a period of last two financial years and have not made any application within such period for obtaining the status of Dormant Company under S. 455 of the Act. But there is no communication from the side of the Petitioner Company. Hence, consequentially the RoC has issued public notice i.e. STK – 7 dated 10.07.2017 intimating that the name of Company is been struck-off from the Register of RoC.
8. It is also submitted that, the Petitioner Company has not filed the Annual Returns and Balance Sheets with the RoC for the F. Y. 2014-2015 and 2015-2016. And as the Statutory Returns were not filed for the said period, the RoC came to conclusion that, the Petitioner Company has ceased to its business. And consequentially the name has been struck-off from the Register of RoC.
9. However, it is further submitted in the said report that the RoC has no objection to restore the name of the Petitioner Company, if the Petitioner Company is willing to comply with the provisions of the Act, subject to imposition of Cost.

Findings:

10. That, the facts and circumstances of the case have enlightened that the relevant documents which are to be filed, are ready with the Company and the Company is willing to file the same, if so permitted. Further that, the accounts of the Company were audited and the audited accounts have been approved for 2011-12 to 2016-17, annexed in the petition.

11. The Additional Affidavit filed by the Petitioner stating the Master Data and the financials of the Companies in which the Directors of the Petitioner Company are holding the directorship clearly reveals that one “LIGHTWAVE TRADING COMPANY PRIVATE LIMITED” Company is having Revenue Generation of ₹1,95,697/- as per the Profit & Loss Statement as on 31.03.2017 has been recorded. Further, it was submitted that another connected company “ALTIUS SPACES PRIVATE LIMITED” has investments worth ₹1,65,70,575/- as shown under the ‘Non-Current Investments’ head of the Balance Sheet as on 31.03.2017. The above stated fact clearly reveals that the said Companies are going concerns and are doing well.
12. However, it is noticed that, this Petition is also filed to avail the benefit of the CODS, 2018 which is floated by the Government. This Bench has passed the order of Restoration in this similar situation in *CP No. 66/252/NCLT/MB/MAH/2018* namely “*M/s. Health and Wellness Aadhar Private Limited*” which is worth to reproduce as under :

“16. We have gone through the said CODS Scheme and the provisions of Law by which the Directors are disqualified. And we came to know that, the Directors are disqualified due to operation of Law and not by the order of any Authority. Hence, we are of the view that, since the Directors are disqualified through an operation of Law, then, they can be qualified in the eyes of Law whenever they comply with the provisions of the Act and the CODS Scheme, 2018. This order will only Restore the name of Petitioner Company in the Register of RoC. For removal of the Disqualification of the Directors they have to follow the procedure laid down by the CODS, 2018.”
13. That, the Company has not deposited heavy cash in its Bank Account during the period of Demonetisation i.e. from 8th November, 2016 to 31st December, 2016, instead of regular trade deposits, as noticed from the annexed Affidavit along with this Petition/Application.
14. Hence, upon considering the facts and circumstances of this present petition/application, this Bench is of the view that, it would be just and proper to order restoration of the name of the Petitioner Company in the Register of Companies maintained by the RoC.
15. Accordingly, this Petition/Application is allowed. The restoration of the Petitioner Company’s name to the Register of Companies maintained by the RoC Pune, is hereby ordered, with a direction that the Company shall comply with the Provisions of the Act. And further it will be subject to payment of costs of ₹50,000/- (Fifty Thousand Only) to be paid by way of Demand Draft in favour of “Pay and Accounts Officer,

Ministry of Corporate Affairs, Mumbai”, within 7 days from the receipt of the duly certified copy of this Order, to this office.

16. This Petition bearing No. 1267252/NCLT/MB/2018 is, therefore, disposed of on the terms directed above. The Learned RoC shall give effect of this Order only after perusal of the Compliance report of cost imposed. The Company is directed to file all the required documents and shall fulfil other relevant statutory compliances within 30 days from Restoration of its name in the Register of Companies maintained by RoC.
17. Ordered accordingly. To be consigned to Records.

Dated : 03.10.2018

SD/-
M. K. SHRAWAT
MEMBER (JUDICIAL)

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