

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

Misc. A No. 1210/KB/2018 in C. P. (Appeal) No. 316/KB/2017

In the matter of:

An application under Section 252 (3) of the Companies Act, 2013 for restoration.

And

In the matter of:

CHANDAN CONSTRUCTION PRIVATE LIMITED (Company Name struck off by the Registrar of Companies, West Bengal) having its Registered Office at 203, Old China Bazar Street, Kolkata 700 001 in the State of West Bengal, within the aforesaid jurisdiction;

And

In the matter of:

SWASTIK PROJECTS PRIVATE LIMITED, having its Registered Office at 12, Shakespeare Sarani, Kolkata 700 071 in the State of West Bengal, within the aforesaid jurisdiction;

.....Appellant

In the matter of:



REGISTRAR OF COMPANIES, WEST BENGAL, having its office at Nizam Palace, 2nd MSO Building, 2nd Floor, 234/4, A.J.C. Bose Road, Kolkata 700 020, within the aforesaid jurisdiction;

.....Respondent

Coram: Shri Madan B. Gosavi, Member (Judicial)

Counsel on Record:

Mr. D. N. Sharma, Advocate

Mr. Nilay Sengupta, Advocate For the Appellant

Mrs. Swati Agarwal, Advocate

Date of pronouncement of the Order : 30-01-2019

CORRIGENDUM TO ORDER DATED 10-10-2018

ORDER

Shri Madan B Gosavi, Member(Judicial)

ORDER



1. The object of this application is to seek amendment in the order passed by this Tribunal on 10th October, 2018 in CP(Appeal) No. 316/KB/2017.

2. Accordingly, the following rectification is made :

- I. That in the cause title of the order, name of the applicant has been shown as "Swastic Projects Private Limited (Company Name Struck Off by Registrar of Companies, West Bengal)" but it should be Swastik Projects Private Limited.
- II. In page 2 Para 1 of the said order it was recorded as :
" This is an appeal filed under Section 252(3) of the Companies Act, 2013, filed by Swastik Projects Private Limited, one of the shareholders of Chandan Construction Private Limited holding 15,500 equity shares of Chandan Construction Private Limited of face value of Rs.10/- each fully paid up of the Appellant Company which has been struck off by the Registrar of Companies West Bengal from 20.10.2016 for non filing of Annual Returns and balance sheets since 31.03.2014 seeking restoration of the Company, namely, Chandan Construction Private Limited on the Register of Companies maintained by the Registrar of Companies, West Bengal."

The paragraph 1 in page 2 should be replaced by the following :

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1. This is an appeal filed under Section 252 (3) of the Companies Act, 2013, filed by Swastik Projects Private Limited, one of the shareholders of Chandan Construction Private Limited, holding 15,500 equity fully paid up shares of face value of Rs. 10/-each. The said Chandan Construction Private Limited (**hereinafter referred to as 'the Struck off Company'**) has been struck off by the Registrar of Companies, West Bengal on 20.10.2016 on account of an application made by the then directors of the Struck off Company under the Fast Track Exit Scheme (FTE).

III. In page 2 paragraph 2 first line, the words "The appellant Company" shall be replaced by the words "The said Struck off Company"

IV. In page 2 paragraph 2 4th line, the words "The authorized share capital of the Company" shall be replaced by the words "The authorised and paid up share capital of the Company".

V. The last sentence of paragraph 2 in page 2 shall be replaced by "There are two directors in the Struck off Company".

VI. In Page 3 Para 3 of the order followings were recorded mistakenly
*"The Appellant contends that the company could not file the Balance Sheets and the financial statement/annual returns since the financial year 31.03.2015 due to the process of amalgamation was going on.
Upon receipt of the notice, the appellant company prepared all relevant documents from the financial year ended 31st march 2014 onwards and showed it's readiness to submit it before the respondents. It is stated by the appellant that due to internal disputes in the struck off Company,*



annual returns to ROC West Bengal could not be submitted. The Audited accounts of the struck off Company from 31.03.2014 onwards have been annexed with the Appeal memorandum."

The paragraph 3 of the said Order should be replaced by the following :

4. From the perusal of the case records, it appears that the directors of the Struck off Company made the application under the Fast Track Exit Scheme in form FTE on 27.08.2016 vide SRN G10073930 to the Registrar of Companies, West Bengal for striking off the Company. In the said application, the Statements of Accounts of the Struck off Company as on 30.07.2016 was also filed. On the basis of the said application, the Registrar of Companies, West Bengal, struck off the Company on 20.10.2016 based on the information provided in the aforesaid application (Form FTE). However, the Appellant contends that the information provided in the said application were untrue and manipulated.
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- VII. In the Page 3 Para 4 from 5th Line onwards followings were recorded mistakenly
"...The Respondent contends that in exercise of the power conferred upon the Registrar of Companies under section 248 of the Companies Act 2013, the said Registrar can strike off the name of the company from his register after complying with certain formalities as provided by the said Section

when he has reasonable cause to believe that the company is not carrying on business or in operation. The Respondent struck off the name of the Petitioner Company under section 248 of the Companies Act, 2013 since he had reasonable cause to believe that Chandan Constructions Private Limited (hereinafter referred to as the 'Company') was not carrying in business in operation for a period of two(2) immediately preceding financial years. It is evident from the records that the Company has not filed its Balance Sheets and Annual Returns since 31.03.2012 before the office of the respondent. The appellant company was in receipt of notice issued by the respondent Registrar of Companies (ROC) West Bengal under Section 248 (1) (in e-Form SKT-5) of the Companies Act 2013 read with Rule 7 of the Companies (Removal of Names of Companies from the Registrar of Companies) Rules 2016 declaring its intention to remove the name of the Company from the Registrar of Companies w.e.f 09.06.2017"

The same shall be deleted and the Paragraph 4 of the said order dated 10-10-2018 shall be read as follows :

5. The Respondent, ROC, West Bengal in response to the notice issued by the Tribunal, filed its affidavit in opposition contending in brief the following:

The Respondent denies each and every allegation made in the appeal memorandum except those contentions which



were specifically admitted in the affidavit-in-opposition. The Respondent stated that the Struck off Company was incorporated on 20.01.1986. The directors of the said Company made an application on 27.08.2016 for striking off the name of the Company under the Fast Track Exit Scheme (FTE) for defunct companies under Section 560 of the Companies Act, 1956. Upon submission of requisite documents by the directors as required under the FTE scheme, the Respondent struck off the Company from the Register of Companies and marked the status of the Company as Struck off in the portal of the Ministry of Corporate Affairs on 20.10.2016. In the FTE application, it is stated that the said Company became inoperative from the end of financial year 2015 and its inventory of Rs. 19,30,000/- was destroyed and became obsolete. The Company further stated that for non-favourable resources and other issues (lack of resources), the directors have decided to strike off the Company by the Registrar of Companies and submitted requisite documents including no assets and liabilities statement duly signed by a Chartered Accountant.

The Respondent observed in its Report on the Struck off Company that *"Pursuant to the scheme of Amalgamation, Gaylord Trading Company Private Limited, one of the Transferor Company had merged and amalgamated with the petitioner, i.e. Swastik Projects Private Limited. The petitioner Company being the*

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Transferee Company, claims that by reason of operation of law, all the assets, liabilities, properties, shares etc. held by and/or in the name of Gaylord Trading Company Private Limited vested with the petitioner Company. However, the shares held by Gaylord Trading Company Private Limited had not been transferred in the name of Swastik Projects Private Limited. Hence, the petitioner may be put to strict proof.”

As per Section 252 of the Companies Act, 2013 a struck off company can be restored only on the direction of the NCLT within a period of three (3) years from the date of the order of the Registrar. In this regard, it is submitted that in terms of the said provisions, the NCLT while passing an order for restoration is to be satisfied that the struck off company is carrying on business or in operation.

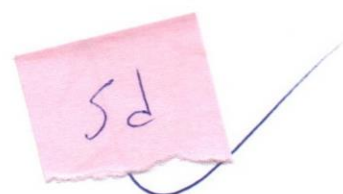
VIII. Consequent upon the amendments as aforesaid, the Paragraphs 5, 6, 7, 8 and Orders (1) to (7) being at Pages 5 to 8 of the said Order dated 10-10-2018, stand replaced as hereinafter stated :

6. Upon the said contentions, the Respondent prays for passing of an order deemed fit and proper considering the objections raised by it.

Heard Ld. Counsel for the appellant and perused the records.



7. The Appellant is holding 15,500 equity shares of Rs. 10/- each fully paid up in the Struck off Company. The Appellant Company filed this appeal for restoration of the Struck off Company under the provisions of Section 252 of the Companies Act, 2013. The Registrar of Companies, West Bengal has struck off the name of the Company from the Register of Companies under the Fast Track Exit Scheme based on information provided by the directors of the Struck off Company in the Application Form FTE.
8. The Appellant has filed copies of Balance Sheet of the Struck off Company as of 31.03.2015 and the Annual Return for the Financial Year 2014-15 along with the Appeal Memorandum. The Appellant has stated that the said documents are obtained from the portal of MCA. Chandan Construction Private Limited was struck off on 26.10.2016. So, on restoration of the company, it would be required to file the Financial Statements of Accounts for the year 2015-16 and onward along with the Annual Return for the respective years.
9. From the perusal of the Profit & Loss Account and the Assets and Liabilities of the Struck off Company, it transpires to me that the Struck off Company is a going concern and doing business. The Struck off Company is engaged in the business of property development. As per the financial statements of the Struck off Company, it is observed that the following profit/loss was made by it:

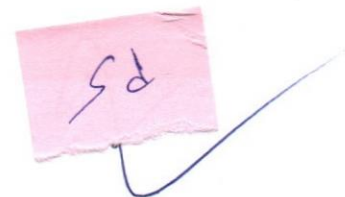


Financial Year	Profit (Rs.)	Loss (Rs.)
31.03.2014		4,200/-
31.03.2015		6,200/-

Accordingly, upon careful screening of the documents produced by the Appellant, it appears to me that the Struck off Company is a going concern. It had filed Annual Return and Balance Sheet as of 31st March 2015 as per statute. However, before the due date for filing the Annual Return and Balance Sheet for the year 2015-16, it applied for striking off its name under the Fast Track Exit Scheme (FTE) on 27th August 2016. So, it cannot be said that the Struck off Company is in default in filing of the aforesaid statements and returns. Therefore, the appeal is allowed.

ORDER

- i) The Registrar of Companies, the Respondent herein, is ordered to restore the original status of the Struck off Company as if the name of the Company has not been struck off from Register of Companies with the resultant and consequential actions like changing the status of the Company from 'Strike off' to 'Active, to activate CIN Nos. of the Struck off Company.



- ii) The Struck off Company is directed to file all pending statutory document(s) including Annual Accounts and Annual Returns for the financial years 2015-16, 2016-17 and 2017-18 along with the prescribed fees/additional fees/fine as decided by ROC within 45 days from the date on which its name is restored in the Register of Companies by the ROC.
- iii) The Appellant is permitted to deliver a certified copy of this order with ROC within thirty days of the receipt of this order.
- iv) On such delivery, the Registrar of Companies, West Bengal is directed to, on his office name and seal, publish the order in the official Gazette.
- v) The order is confined to the restoration of the Struck off 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 Struck off Company and/or its directors.

IX. The unnumbered two paragraphs at Page 8 of the Order dated 10-10-2018 stand numbered as 10 and 11.

3. The above rectifications of the Order of this Tribunal dated 10-10-2018 have been made in terms of the power conferred upon the Tribunal under Rule 154 of the NCLT Rules, 2016.

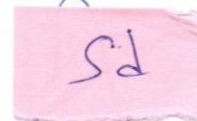
4. Accordingly, the order dated 10-10-2018, passed in CP(Appeal) No. 316/KB/2017, stands rectified as above and this order shall form integral part of the order of this Tribunal dated 10-10-2018.

5. The Application Misc. A. No. 1210/KB/2018, in CP(Appeal) No. 316/KB/2017, stands disposed of.

6. The amended order shall be uploaded immediately and one copy of the order may also be kept in the file.

7. Urgent copy of this order be supplied to the party.

Signed on 30th January, 2019



(Madan B. Gosavi)
Member(Judicial)

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

C. P. (Appeal) No. 316/KB/2017

In the matter of:

An application under Section 252 (3) of the Companies Act, 2013 for restoration.

And

In the matter of:

CHANDAN CONSTRUCTION PRIVATE LIMITED (Company Name struck off by the Registrar of Companies, West Bengal) having its Registered Office at 203, Old China Bazar Street, Kolkata 700 001 in the State of West Bengal, within the aforesaid jurisdiction;

And

In the matter of:

SWASTIK PROJECTS PRIVATE LIMITED, having its Registered Office at 12, Shakespeare Sarani, Kolkata 700 071 in the State of West Bengal, within the aforesaid jurisdiction;

.....Appellant.

In the matter of:

REGISTRAR OF COMPANIES, WEST BENGAL, having its office at Nizam Palace, 2nd M.S.O Building, 2nd Floor, 234/4, A.J.C. Bose Road, Kolkata 700 020, within the aforesaid jurisdiction;

.....Respondent.

Coram: Shri Madan B. Gosavi, Member (Judicial)

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Counsel on Record:

Mr. D. N. Sharma, Advocate

Mr. Nilay Sengupta, Advocate

Mrs. Swati Agarwal, Advocate

For the Appellant.

Date of Pronouncement of the Order : 30-01-2019

AMENDED O R D E R

Shri Madan B Gosavi, Member(Judicial)

1. This is an appeal filed under Section 252 (3) of the Companies Act, 2013, filed by Swastik Projects Private Limited, one of the shareholders of Chandan Construction Private Limited, holding 15,500 equity fully paid up shares of face value of Rs. 10/-each. The said Chandan Construction Private Limited (**hereinafter referred to as 'the Struck off Company'**) has been struck off by the Registrar of Companies, West Bengal on 20.10.2016 on account of an application made by the then directors of the Struck off Company under the Fast Track Exit Scheme (FTE).
2. The said Struck off Company is a Private Company limited by shares incorporated on 20.01.1986 under the provisions of the Companies Act, 1956 having its Registered Office at 203, Old China Bazar Street, Kolkata 700 001 in the State of West Bengal. The authorised and paid up share capital of the Company is Rs. 19,46,000/- (Rupees Nineteen lakh and forty- six thousand only). There are two directors in the Struck off Company.
3. One Gaylord Trading Company Private Limited was earlier the owner of the 15,500 equity shares in Chandan Construction Private Limited. The said Gaylord Trading Company Private Limited was amalgamated with the Appellant Company, i.e. Swastik Projects Private Limited by the Scheme of Amalgamation sanctioned by the Hon'ble Calcutta High

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Court under Section 391 and 394 of the Companies Act, 1956 in C.P. No. 26 of 1994 by an order dated 7th March 1994. Pursuant to the aforesaid Scheme of Amalgamation, Gaylord Trading Company Private Limited as one of the Transferor Companies along with other Transferor Companies had merged and amalgamated with the appellant herein Swastik Projects Private Limited. A copy of the order sanctioning the Scheme of Amalgamation passed by the Hon'ble Calcutta High Court dated 7.3.1994 is annexed with the appeal memorandum and marked as "A".

4. From the perusal of the case records, it appears that the directors of the Struck off Company made the application under the Fast Track Exit Scheme in form FTE on 27.08.2016 vide SRN G10073930 to the Registrar of Companies, West Bengal for striking off the Company. In the said application, the Statements of Accounts of the Struck off Company as on 30.07.2016 was also filed. On the basis of the said application, the Registrar of Companies, West Bengal, struck off the Company on 20.10.2016 based on the information provided in the aforesaid application (Form FTE). However, the Appellant contends that the information provided in the said application were untrue and manipulated.
5. The Respondent, ROC, West Bengal in response to the notice issued by the Tribunal, filed its affidavit in opposition contending in brief the following:

The Respondent denies each and every allegation made in the appeal memorandum except those contentions which were specifically admitted in the affidavit-in-opposition. The Respondent stated that the Struck off Company was incorporated on 20.01.1986. The directors of the said Company made an application on 27.08.2016 for striking off the name of the Company under the Fast Track Exit Scheme (FTE) for defunct companies under Section 560 of the Companies Act, 1956. Upon submission of requisite documents by the directors as required

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under the FTE scheme, the Respondent struck off the Company from the Register of Companies and marked the status of the Company as Struck off in the portal of the Ministry of Corporate Affairs on 20.10.2016. In the FTE application, it is stated that the said Company became inoperative from the end of financial year 2015 and its inventory of Rs. 19,30,000/- was destroyed and became obsolete. The Company further stated that for non-favourable resources and other issues (lack of resources), the directors have decided to strike off the Company by the Registrar of Companies and submitted requisite documents including no assets and liabilities statement duly signed by a Chartered Accountant.

The Respondent observed in its Report on the Struck off Company that *“Pursuant to the scheme of Amalgamation, Gaylord Trading Company Private Limited, one of the Transferor Company had merged and amalgamated with the petitioner, i.e. Swastik Projects Private Limited. The petitioner Company being the Transferee Company, claims that by reason of operation of law, all the assets, liabilities, properties, shares etc. held by and/or in the name of Gaylord Trading Company Private Limited vested with the petitioner Company. However, the shares held by Gaylord Trading Company Private Limited had not been transferred in the name of Swastik Projects Private Limited. Hence, the petitioner may be put to strict proof.”*

As per Section 252 of the Companies Act, 2013 a struck off company can be restored only on the direction of the NCLT within a period of three (3) years from the date of the order of the Registrar. In this regard, it is submitted that in terms of the said provisions, the NCLT while passing an order for restoration is to be satisfied that the struck off company is carrying on business or in operation.

6. Upon the said contentions, the Respondent prays for passing of an order deemed fit and proper considering the objections raised by it.

Heard Ld. Counsel for the appellant and perused the records.

7. The Appellant is holding 15,500 equity shares of Rs. 10/- each fully paid up in the Struck off Company. The Appellant Company filed this appeal for restoration of the Struck off Company under the provisions of Section 252 of the Companies Act, 2013. The Registrar of Companies, West Bengal has struck off the name of the Company from the Register of Companies under the Fast Track Exit Scheme based on information provided by the directors of the Struck off Company in the Application Form FTE.
8. The Appellant has filed copies of Balance Sheet of the Struck off Company as of 31.03.2015 and the Annual Return for the Financial Year 2014-15 along with the Appeal Memorandum. The Appellant has stated that the said documents are obtained from the portal of MCA. Chandan Construction Private Limited was struck off on 26.10.2016. So, on restoration of the company, it would be required to file the Financial Statements of Accounts for the year 2015-16 and onward along with the Annual Return for the respective years.
9. From the perusal of the Profit & Loss Account and the Assets and Liabilities of the Struck off Company, it transpires to me that the Struck off Company is a going concern and doing business. The Struck off Company is engaged in the business of property development. As per the financial statements of the Struck off Company, it is observed that the following profit/loss was made by it:

Financial Year	Profit (Rs.)	Loss (Rs.)
31.03.2014.		4,200/-
31.03.2015		6,200/-

Accordingly, upon careful screening of the documents produced by the Appellant, it appears to me that the Struck off Company is a going concern. It had filed Annual Return and Balance Sheet as of 31st March

2015 as per statute. However, before the due date for filing the Annual Return and Balance Sheet for the year 2015-16, it applied for striking off its name under the Fast Track Exit Scheme (FTE) on 27th August 2016. So, it cannot be said that the Struck off Company is in default in filing of the aforesaid statements and returns. Therefore, the appeal is allowed.

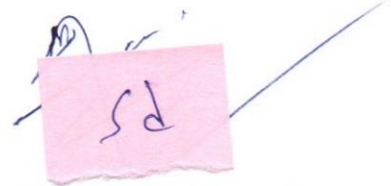
ORDER

- i) The Registrar of Companies, the Respondent herein, is ordered to restore the original status of the Struck off Company as if the name of the Company has not been struck off from Register of Companies with the resultant and consequential actions like changing the status of the Company from 'Strike off' to 'Active, to activate CIN Nos. of the Struck off Company.
- ii) The Struck off Company is directed to file all pending statutory document(s) including Annual Accounts and Annual Returns for the financial years 2015-16, 2016-17 and 2017-18 along with the prescribed fees/additional fees/fine as decided by ROC within 45 days from the date on which its name is restored in the Register of Companies by the ROC.
- iii) The Appellant is permitted to deliver a certified copy of this order with ROC within thirty days of the receipt of this order.
- iv) On such delivery, the Registrar of Companies, West Bengal is directed to, on his office name and seal, publish the order in the official Gazette.
- v) The order is confined to the restoration of the Struck off Company, and it will not come in the way of ROC to take appropriate action(s) in accordance with law, for any other

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violations/offences, if any, committed by the Struck off Company and/or its directors.

10. The C.P. (Appeal) No. 316/KB/2017 is disposed of accordingly.
11. Urgent certified copies of this order, if applied for, be issued upon compliance with all requisite formalities.



(Madan B. Gosavi)

Member (Judicial)

GOUR_STENO

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

C.P. (Appeal) No.316/KB/2017

Coram: Mr. Madan B. Gosavi, Member (Judicial)

In the matter of

An application under Section 252 (3) of the Companies Act, 2013 for restoration.

And

In the matter of:

CHANDAN CONSTRUCTION PRIVATE LIMITED (Company Name Struck Off by Registrar of Companies, West Bengal) having its registered office at 203 Old China Bazar Street, Kolkata 700 001 in the state of West Bengal, within the aforesaid jurisdiction;

And

In the matter of:

SWASTIC PROJECTS PRIVATE LIMITED (Company Name Struck Off by Registrar of Companies, West Bengal) having its registered office at 12, Shakespeare Sarani, Kolkata 700 071 in the state of West Bengal, within the aforesaid jurisdiction;

And

..... Appellant.

In the matter of:

REGISTRAR OF COMPANIES, WEST BENGAL, having its office at Nizam Palace, 2nd M.S.O. Building, 2nd Floor, 234/4 A.J.C. Bose Road, Kolkata 700 020, within the aforesaid jurisdiction.

.... Respondent

Counsel on Record:

Mr. D.N. Sharma, Advocate] - For the Appellant.
Mr. Nilay Sengupta, Advocate]
Ms. Swati Agarwal, Advocate]

Sd

Date of Pronouncement of Order: 10th October 2018.

O R D E R

1. This is an appeal filed under Section 252(3) of the Companies Act, 2013, filed by Swastik Projects Private Limited, one of the shareholders of Chandan Construction Private Limited holding 15,500 equity shares of Chandan Construction Private Limited of face value of Rs.10/- each fully paid up of the Appellant Company which has been struck off by the Registrar of Companies West Bengal from 20.10.2016 for non-filing of annual returns and balance sheets since 31.03.2014 seeking restoration of the Company, namely, Chandan Construction Private Limited on the Register of Companies maintained by the Registrar of Companies, West Bengal.

2. The appellant Company is a Private Company limited by shares incorporated on 20.01.1986 under the provisions of the Companies Act, 1956 having its registered office at 203 Old China Bazar Street, Kolkata 700 001 in the state of West Bengal. The authorized share capital of the Company is Rs.19,46,000/- (Rupees Nineteen lakh forty-six thousand only). There are three directors in the struck-off Company.

3. One Gaylord Trading Company Private Limited was earlier the owner of the 15,500 equity shares in Chandan Construction Private Limited. The said Gaylord Trading Company Private Limited was amalgamated with the Appellant Company i.e. Swastik Projects Private Limited by the Scheme of Amalgamation sanctioned by the Hon'ble Calcutta High Court under Section 391 and 394 of the Companies Act 1956 in C.P. No.26 of 1994 by an order dated 7th March 1994. Pursuant to the aforesaid Scheme of Amalgamation, Gaylord Trading Company Private Limited as one of the Transferor Companies

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along with other Transferor Companies had merged and amalgamated with the appellant herein Swastik Projects Private Limited. A copy of the order sanctioning the Scheme of Amalgamation passed by the Hon'ble Calcutta High Court dated 7.3.1994 is annexed with the appeal memorandum and marked as "A".

3. The appellant contends that the Company could not file Balance Sheets and financial statements / annual returns since the financial year 31.03.2015 due to the process of amalgamation was going on.

Upon receipt of the notice, the appellant Company prepared all relevant documents from the financial year ended 31st March 2014 onwards and showed its readiness to submit it before the respondents. It is stated by the appellant that due to internal disputes in the struck off Company, annual returns to ROC West Bengal could not be submitted. The audited accounts of the struck off Company from 31.03.2014 onwards have been annexed with the appeal memorandum.

4. The respondent, ROC West Bengal in response to the notice issued by the Tribunal filed its affidavit in opposition contending in brief is the following:

The respondent denies each and every allegation made in the appeal memorandum except those contentions which was specifically admitted in the affidavit in opposition. The respondent contends that in exercise of the power conferred upon the Registrar of Companies under Section 248 of the Companies Act, 2013 the said Registrar can strike off the name of the Company from his register after complying with certain formalities as provided by the said Section when he has reasonable cause to believe that the company is not carrying on business or in operation. The respondent has struck off the name of the Petitioner Company under Section 248 of the Companies Act, 2013 since

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he had reasonable cause to believe that Chandan Construction Private Limited (hereinafter referred to as the 'Company') was not carrying in business in operation for a period of two (2) immediately preceding financial years. It is evident from the records that the Company has not filed its Balance Sheets and Annual Returns since 31.03.2012 before the office of the respondent. The appellant company was in receipt of notice issued by respondent Registrar of Companies (ROC) West Bengal under Section 248(1) (in e-form STK-5) of the Companies Act, 2013 read with Rule 7 of the Companies (Removal of Names of Companies from the Registrar of Companies) Rules 2016 declaring its intention to remove the name of the Company from Registrar of Companies w.e.f. 09.06.2017.

ROC observed in its Report on Chandan Construction Private Limited that *"Pursuant to the Scheme of Amalgamation, Gaylord Trading Company Private Limited, one of the transferor Company had merged and amalgamated with the petitioner i.e. Swastik Projects Private Limited. The petitioner Company being Transferee Company, claims that by reason of operation of law, all the assets, liabilities, properties, shares etc. held by and / or in the name of Gaylord Trading Company Private Limited vested with the petitioner Company. However, the shares held by Gaylord Trading Company Private Limited has not been transferred in the name of Swastik Projects Private Limited. Hence, the petitioner may be put to strict proof."*

As per Section 252 of the Companies Act, 2013 a struck off company can be restored only on the direction of the NCLT within a period of three (3) years from the date of the order of the Registrar. In this regard it is submitted that in terms of the said provisions the NCLT while passing an order for restoration is to be satisfied that the struck-off Company is carrying on business or in operation.

Sd

5. Upon the said contentions the respondent prays for passing of an order deemed fit and proper considering the objections raised by the respondent.

Heard Ld. Counsel for the appellant and perused the records.

6. One of the shareholders of Chandan Construction Private Limited, namely, Swastik Projects Private Limited, one of the shareholders of Chandan Construction Private Limited holding 15,500 equity shares of Chandan Construction Private Limited of face value of Rs.10/- each fully paid up of the Appellant Company which has been struck off by the Registrar of Companies West Bengal filed this appeal under Section 252 of the Companies Act 2013 for restoration of the Company's name in the Register of the ROC West Bengal. The Appellant Company admittedly failed in submitting the annual returns and balance sheets from the financial year ended 31st March 2014 onwards on the ground of inadvertent mistake on the part of Company as he failed in filing return in time. The appellant also admitted the receipt of notice under Section 248(1) of the Companies Act, 2013 issued by the Registrar of Companies, West Bengal. Therefore, there is no illegality or irregularity on the side of the respondent ROC West Bengal in striking off the name of the Company from the register of the respondent.

7. It has come out in evidence that the appellant Company has not filed its statutory documents i.e. Balance Sheets and Annual Returns from 31.03.2014. In order to satisfy this Tribunal that the appellant Company is a going concern, the appellant produced the annual returns, balance sheets for the year ended 31.3.2014 to 31.3.2015, directors' report, and statement of Bank Accounts of along with the Appeal Memorandum.

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8. A perusal of the Profit & Loss Account and Assets and Liabilities, it appears to us that the appellant Company is a going concern and doing business. The struck off Company is engaged in the business of all kinds HDPE pipes and fittings. As per the financial statements of the struck-off Company, it is observed that the following profit / (loss) was made by it:

Financial Year ended.	Profit (Rs.)	(Loss) – Rs.
31.03.14		4,200
31.03.15		6,200

Accordingly, upon careful screening of the documents produced from the side of the appellant, it appears to me that the appellant Company is a going concern. However, it failed in filing annual returns and balance sheets as per the provisions of the statute and thereby respondent ROC West Bengal was forced to strike off the name of the Company from the register of the Companies. However, the reason for non-filing of annual returns and balance sheets in time narrated by the appellant in the Appeal Memorandum seems to be unbelievable and unacceptable. The appellant Company is found defaulted in filing of the returns for more than 6 (Six) years consecutively. Therefore, the appeal is liable to be allowed upon payment of cost of Rs.50,000/- (Rupees Fifty Thousands only) which is found reasonable considering the peculiar circumstances of the case in hand.

Accordingly, I allow the appeal by exercising the powers conferred on this Tribunal under Section 252 of the Companies Act, 2013 upon the following directions:

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ORDER


- (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 with resultant and consequential actions like changing status of Company from 'strike off to Active; to activate DIN Nos of the applicants etc.
- (2) The Applicant company is directed to file all pending statutory document(s) including Annual Accounts and Annual returns for the financial years 2013-14 to 2017-2018 along with prescribed fees/ additional fee/fine as decided by ROC within 45 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 appeal on behalf of the Appellant Company, 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.50,000/- (Rupees Fifty Thousands 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 C.P. (Appeal) No.316/KB/2017".
- (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, West Bengal 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 leads 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 /offenses, if any, committed by the applicant company prior or during the striking off of the company.

The C.P). (Appeal) No.316/KB/2017 is disposed of accordingly.

Urgent certified copy of this order, if applied for be issued upon compliance with all requisite formalities.


10/10/2018
(Madan B. Gosavi)
Member (J)

Signed this day of 10th October, 2018.

PS_Aloke