

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

C.P. (Appeal) No.322/KB/2018

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:

SHOOLIN POWER & STEEL PRIVATE LIMITED (Company Name Struck Off by Registrar of Companies, West Bengal) having its registered office at 45/1 Dilkhusa Street, Kolkata 700 017 in the state of West Bengal, within the aforesaid jurisdiction;

And

In the matter of:

MR. JAWAHAR LAL, residing at 57-B Sindhi Refujee Colony, Molmuri, Agrico, Jamshedpur 831 003 in the state of Jharkhand, within the aforesaid jurisdiction;
... Petitioner

And

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. Mohan Ram Goenka, Pr. C.S.] - For the Appellant.

Date of Pronouncement of Order: 10th October 2018.

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ORDER

1. This is an appeal filed under Section 252(3) of the Companies Act, 2013, filed by one Mr. Jawahar Lal Vig son of Mr. Joginder Lal, ex-director and shareholder of the Appellant Company which has been struck off by the Registrar of Companies West Bengal from 09.06.2017 for non-filing of annual returns and balance sheets since incorporation seeking restoration of the Company, namely, Shoolin Power & Steel 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 29.08.2011 under the provisions of the Companies Act, 1956 having its registered office at 45/1 Dilkhusa Street, Kolkata 700 017 in the state of West Bengal. The authorized share capital of the Company is Rs.10,00,00,000/- (Rupees Ten Crores only) comprising of 1,00,00,000 equity share of Rs.10/- each. The Paid-Up share capital of the Company is Rs.10,00,000/- (Rupees Ten Lakh only) comprising of 1,00,000 equity shares of Rs.10/- each. There are two Directors of the struck-off Company.

3. The appellant contends that the Company could not file Balance Sheets and financial statements / annual returns since the financial year 31.03.2012 (since incorporation) due to certain internal problem when the accountant to whom the duty was given to submit returns failed to perform his duties on medical reasons and as a result there was default in submission of returns.

Upon receipt of the notice, the appellant Company prepared all relevant documents from the financial year ended 31st March 2012 onwards and showed its readiness to submit it before the respondents. It is stated by the appellant

that due to non-performance of the accounting staff on medical ground in the struck off Company, annual returns to ROC West Bengal could not be submitted. The audited accounts of the struck off Company from 31.03.2012 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 he had reasonable cause to believe that Shoolin Power & Steel 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.

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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 company is carrying on business or in operation.

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 directors and shareholder of Shoolin Power & Steel Private Limited, namely, Mr. Jawahar Lal Vig 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 2012 onwards (since incorporation) 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 31.03.2012 (since incorporation). 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 31.03.2013 to 31.03.2017

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as Annexure A-5 to the Appeal Memorandum. The struck off Company has also filed Income Tax Returns for the assessment years 2016-17 and 2017-18 and the acknowledgements have been attached with Rejoinder Affidavit dated 10.04.2018.

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 manufacturing iron and steel and in the business of real estate sector etc. 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.
31.03.12		16,680
31.03.13		13,083
31.03.14		12,897
31.03.15		12,890
31.03.16		2,934
31.03.17		12,636

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 7 (Seven) years consecutively since its

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incorporation. Therefore, the appeal is liable to be allowed upon payment of cost of Rs.1,00,000/- (Rupees One Lakh 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:

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 2011-12 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.1,00,000/- (Rupees One Lakh only) through

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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.322/KB/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.
- (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.322/KB/2018 is disposed of accordingly.

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

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(Madan B. Gosavi)
Member (J)

Signed this day of 10th October, 2018.

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