

NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH: GUWAHATI

CP. No.21/252(1)/GB/2018

Under Section 252(1) of the Companies Act, 2013

In the matter of:

Hometown Projects & Construction Pvt. Ltd. : ...Petitioner
-Versus-

Registrar of Companies, NE Region, Shillong : ...Respondent

Order delivered on 27th August, 2018

Coram:

Present Hon'ble Mr. Justice P.K. Saikia, Member (J)

ORDER

This is an application under Section 252 of the Companies Act, 2013 seeking following reliefs:

"(A). Pass appropriate order to admit the petition.

(B). Pass appropriate order directing the respondent to restore the name of the Company in the register with immediate effect in terms of the Section 252(1) of the Companies Act, 2013.

(C). Pass order in terms of Section 252(1) of the Companies Act, 2013 that is just and appropriate placing the Company and all other persons in the same position as nearly as may be as if the name of the Company has not been struck off.

(D). Pass such order and further orders as this may deem fit and proper in the facts and circumstances of the case"

2. This Bench on present application was pleased to pass following order on 26th July, 2018. For ready reference reproduce below:

ORDER

"This application under Section 252(1) of the Companies Act, 2013 has been filed by the petitioner company, namely Hometown Projects & Construction Pvt. Ltd. seeking restoration of its name in the register alleging that the petitioner company was struck from the register of companies maintained in the office of the Registrar of Companies, Shillong not in accordance with the prescription of law and as such the petitioner company is aggrieved by the conduct of the respondent ROC, Shillong in striking off its name.

2. It has further been submitted that the company was engaged in the business of construction of building and real estate in Agartala in the State of Tripura and it has been conducting its business profitably. But since its name has been struck off from the register of companies maintained by the ROC, Shillong, the petitioner company is not able to carry out its business.

3. It has also been submitted that since the petitioner company was not in a position to file annual returns, balance sheets and balance sheets etc. for the period from 2014 to 2016, its name was struck off by the ROC, Shillong. But in doing so, the prescription of law as rendered under Section 240(1) of the Act of 2013 was not followed. All these facts have been incorporated in the petition. The relevant part of the petition is reproduced below: -

- "d) The petitioner state that in fact, the petitioner company was duty bound to file the annual return and balance sheet time to time. The petitioner company has failed to file its statutory reports since the year 2014. The true affairs of the company is reflected in its Balance Sheet and that had been prepared and duly audited by the Chartered Accountant up to 31st March 2018.
- e) The petitioner company had an honest belief that the company would be in a position to start the said business and would be in a position to place before the statutory returns in time before authorities including the Registrar of Companies in time. (The copies of the balance sheet are annexed as Annexure-II Series).
- f) That there was due to unavoidable incidents and other medical issues the requisite documents was not filed before the Registrar of Companies.
- g) That the petitioner company had reasonable believe that the concerned respondents herein would allow the said company to file the return on receipt of late fee in addition to the fee for filing of returns, on payment of requisite fee as well as additional fee, the filing of requisite document could not be rectified, on such rectification, there is no violation of any provision of the Act under the Companies Act.
- h) That on noticing that the statutory returns has not been filed in time, your applicant took immediate steps for filing of statutory returns before the Registrar of companies accordingly the consultant had prepared all requisite documents for filing of return before the Registrar of Companies. The requisite returns could not be filed due, The Registrar of Companies might have on noticing the non filing of statutory returns by the petitioner company legally bound on payment of late fee, as stipulated in Companies Act. Thereafter, the action has been taken for struck down of the name of the company from the Register of the companies, due to shortcoming for filing of statutory returns."

4. In this connection, I have also heard Mr. D. K. Jain, learned legal representative of the petitioner. Mr. Khanindra Kr. Goswami, learned counsel representing the ROC, Shillong submits that he needs some time to receive respond in this regard.

5. The petitioner is directed to serve a copy of the petition once again through the learned counsel appearing for the ROC, Shillong.

6. The Registry is directed to list the matter on 27th August, 2018."

3. In response to the order dated 26th July, the Registrar of Companies (in short ROC) N. E. Region, Shillong has submitted the report, contesting the claim of the claimant in paragraph 6 of the petition. For ready reference relevant part of the report is reproduced below:

"3. That with respect to averment made in para 6 your respondent humbly submits that the company was struck off in due and complete compliance of Section 248 of the Companies Act, 2013 and notice dated 07.04.2017 was issued to the subject company enquiring therein, whether the company was carrying on business/operation or not and in case the company did, it was requested to reply within the time stated there in the notice so issued. Since, no reply was received from the company, its name of finally struck off from the Register of Companies, u/s 248 on 09.06.2017. It is submitted that NCLT has jurisdiction u/s 252 of the Companies Act, 2013 and with respect to limitation it is submitted that sub-section (3) of Section 252 of Companies Act, 2013 stipulates that if a company, or any member or creditor or workman thereof 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 stored 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.

The name of the subject company was struck off and dissolved on 09.06.2017 and thus the application appears to be within the limitation prescribed subject to proof of the fact that petitioner is a shareholder/member of the struck off company.

4. That with respect to the averments made in para 7, expect for what are matter of facts and record everything is disputed and denied and the petitioner may be put to strict proof thereof.

5. That averment made in para 10 are relief sought before the Hon'ble Tribunal and the same may be considered by the Tribunal after due consideration of the facts and representation made by your humble respondent."

4. However, in his report the ROC -NE Region, Shillong further prayed that if this Bench is pleased then the petition may be allowed, subject to the imposition of certain conditions on the petitioner. For ready reference prayer part of the report is also reproduced below:

"Prayer


That if the prayer of the petitioner is considered by the Hon'ble Tribunal on merits in restoration of the name of the company u/s 252(3) of the Companies Act, 2013, the Hon'ble Tribunal may be pleased to direct the petitioner to"

- i. Comply with all statutory provisions of Companies Act, 2013 and file its pending statutory returns as per the Law prescribed within 30 days of the restoration order being passed.*
- ii. To pay the restoration cost of not less than Rs.25,000/- (Rupees Twenty Five Thousand only) payable to the Ministry of Corporate Affairs, Government of India since new company is registered without authorized Capital of Rs.10,00,000/- (Ten Lakh only) they may have to pay registration fees and also to serve as a deterrent for the companies which are negligent in compliance with the provisions of Companies Act.*
- iii. Such other order/directions as the Hon'ble Tribunal may deem fit and proper."*

5. I have considered aforementioned application and have also gone through the report of the ROC, Shillong. On going through the application, in the light of averments made in the report of the ROC, Shillong, it is found that all the procedures relating to striking off the name of the company from the register of companies were not meticulously followed in case of striking off the name of the petitioner company from the aforesaid register and, therefore, there is reason to believe that the petitioner company got aggrieved for its name being struck off from the register of companies. Therefore, in the interest of justice, prayer made in the petition is required to be accepted. Accordingly, the petition is allowed with the following conditions: -

- (1) The petitioner will comply with all statutory provisions of Companies Act, 2013 and file its pending statutory returns as per the Law prescribed within 30 days of this order.
- (2) The petitioner will pay restoration cost of Rs.10,000/- (Rupees Ten Thousand only) payable to the Ministry of Corporate Affairs, Government of India.
- (3) The petitioner shall file an affidavit in respect of compliance of the directions rendered hereinabove.

6. This petition is disposed of accordingly.


Member (Judicial)
National Company Law Tribunal
Guwahati Bench, Guwahati

Ashish