

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

Co. Appeal No. 212/252(3)/NCLT/AHM/2018

Coram: **Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER JUDICIAL**
Hon'ble Ms. MANORAMA KUMARI, MEMBER JUDICIAL

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 03.10.2018**

Name of the Company: Devang Pandya
(J K Agro Impex Pvt Ltd)
V/s.
ROC, Ahmedabad, Gujarat.

Section of the Companies Act: Section 252(3) of the Companies Act, 2013

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
--------------	-------------------------------	--------------------	-----------------------	------------------


1.

2.

ORDER

None present for the appellant as well as for the ROC.

The Order is pronounced in the open court, vide separate sheet.


MANORAMA KUMARI
MEMBER JUDICIAL


HARIHAR PRAKASH CHATURVEDI
MEMBER JUDICIAL

Dated this the 3rd day of October, 2018

**BEFORE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH**

Co. Appeal No. 212/252(3)/NCLT/AHM/2018

In the matter of:

M/s. J K AGRO IMPEX PVT. LTD.

In the matter between:

Mr. Devan Pandya
S/o. Me. Nareshkumar Pandya
Room No. 32, Building No. D2/14,
Radha Nagar, Tower, Barave Road,
Khadak Pada, Nr. Ayush Hospital,
Kalyan West, Mumbai,
Maharastra

..... Appellant

Versus

Registrar of Companies,
ROC Bhavan,
Opp. Rupal Park Society,
B/h. Ankur Bus Stop,
Naranpura, Ahmedabad-380013

..... Respondent

Order delivered on 3rd October, 2018.

Coram: Hon'ble Mr. Harihar Prakash Chaturvedi Member (Judicial)

Hon'ble Ms. Manorama Kumari, Member (Judicial)

Appearance:

PCS Mr. Amrish N. Gandhi is present for the Appellant

Advocate Mr. Nachiket D. Mehta for Respondent (Income Tax Department)

[Per : Hon'ble Mr. Harihar Prakash Chaturvedi, Member(J)]

1. By this Appeal, the Company namely, **M/s. J K Agro Impex Pvt. Ltd.**, seeks for restoration of its name in the Register of the ROC, Ahmedabad. The Registrar of Companies, Ahmedabad, Gujarat

Chatur

[Signature]

["ROC" for short] vide its impugned order dated 21.06.2017 has struck off the name of the Company. Being aggrieved with this impugned action the appellant being a Shareholder (having 75% of total shareholding) of the Company has prayed for grant of following main reliefs: -`

- (i) *That this Tribunal may order to restore the name of the company e.g. JK AGRO IMPEX PVT. LTD to the Register of Companies maintained in the office of Registrar of Companies under the provisions of Section 252 of the Companies Act, 2013, in the interest of justice and equity;*
- (ii) *This Tribunal may to order for restoring Directorship of Mr. Devang Nareshkunnar Pandya and Mr. Wasim Ahmed Bashiruddin Shaikh as Directors of the Company pursuant to section 252(3) of Companies Act, 2013.*

2. The facts in brief, which are necessary for disposal of the present Appeal are stated as under;

- i. It is stated that the ROC, Ahmedabad vide its Public Notice No. ROC/AHMD/248(5)STK-7/3107 dated 21.06.2017 (issued in Form No. STK-7) further followed by final notice (issued under sub-section (5) of Section 248 of the Companies Act, 2013), has struck off the name of the Company from the Register of Companies with effect from 21.06.2017 inter alia on such reason that the Company failed in filing of its financial statements and annual returns from its financial year ended on 31.03.2013 onwards.

Attn:

- ii. It is submitted that the Company was originally incorporated on 20.07.2011 with such object to carry on the business of import, export, deal , distribute, repair, service, maintain and to do the business of agricultural machines, tools and implements required for agriculture or farming, plant protection appliances of different kinds and description suitable for farming and other fields of operations, haulage, irrigation and poultry and in particular power agricultural tillers, hand tractors, threshers, rice hullers and polishers, pumps, reapers, lawn movers, sprayers, sprinklers, duster, mist seeds and fertilizers drills and transplant whether motivated by internal combustion engine and electric motors and/or batteries driven by animals or worked manually alongwith their engines, drier attachment, implements, tools, jigs and die parts, components assemblies, casting and machines tools for special applications and to purchase, import, export sell and generally deal etc..
- iii. As per material available on record the appellant Company **M/s. JK AGRO IMPEX PRIVATE LTD.**, was incorporated on 20.07.2011 having its registered office at Plot No. 144, Modhvas, At/post Nava Sanghpur, TA-Vijapur, Dist. Mehsana-382870. The company seems to be going concern as it was carrying on its business operation.

Chandra

3. The ROC, Gujarat in his representation dated 25TH July, 2018, has denied the allegation of the appellant and justified its impugned action contending that the name of the Company has been struck off due to this reason that Company failed in file its statutory returns from 31.03.2013 onwards. The ROC, however, has further stated that this court may pass an appropriate order for restoring the name of the Company subject to following condition.

- (i) The Company will file all the overdue statutory returns viz. Financial Statements and Annual Returns for the years which have not been filed and also other event based documents if any, with fees and additional fees as required under the Companies Act, 2013.*
- (ii) The publication of notice in two leading newspapers circulating in the district official Gazette of Government of India, in regard to the restoration of the name of the Company on the register maintained in the office of the respondent as per the draft approved by the respondent, at the cost of the petitioner.*
- (iii) The petitioner will ensure that the Company will not make any default in filing of statutory returns in future as required under the Companies Act, 2013.*
- (iv) The Hon'ble Tribunal may please be direct the petitioner to pay cost as may deem fit and proper to the Registrar of Companies for restoring the name of the Company under Section 252 (3) of the Act as the respondent had incurred expenditure on sending notices, publication of notices in newspaper and official gazette in respect of striking off companies.*
- (v) such other order as may be deemed fit and proper by this Tribunal under the circumstances of the case.*

Abhishek

[Handwritten signature]

4. The representation from the Income Tax Department is received on 04.09.2018, through its Learned Lawyer who has stated as under:
- (a) the assessee company did not file its returns for the A.Y. 2012-13,2013-14,2014-15 and 2015-16.
 - (b) However, the returns for the A.Y. 2016-17 and A.Y. 2017-18 are filed on 28/03/2018 which are not found to be filed with due date as per provision of Section 139(1) of the Income Tax Act, 1961.
5. The Appellant Mr. Devang Pandya has filed the present appeal under Section 252(3) of the Companies Act as being Shareholder (having 75% shares) of the Company. Hence, he is entitled to file the same seeking for restoration of the name of the Company. Therefore, the present Appeal is found maintainable. Further, the name of the Company **M/s. J K AGRO IMPEX PRIVATE LTD**, was struck off on 21.06.2017 from the Register of Companies and the same was got published in the Gazette of India. While the present Appeal was filed on 13th April, 2018, Hence the present appeal is found to be filed well within limitation.
6. On perusal of the material available on record, the main reason shown for striking off the name of the Company is that it failed to file its statutory returns from 31.03.2013 onwards. The Company appears to have conducted its Annual General Meetings and adopted the Audited Financial Statements but due to inadvertence and due to

Abnar



lack of Professional Support and guidance it did not file the statutory compliances.

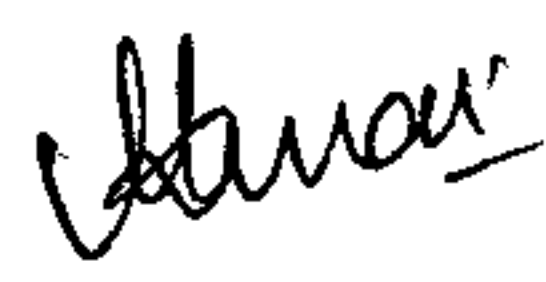
7. The material on record also goes on to show that the Company was is not a going concern and doing its business activities. The Appellant has submitted that after the restoration of name of the Company and revive of the DIN number the Director of the Company intend to make all statutory compliances and to restart its business activities and it would be advantageous to the Appellant to do the business in the old name of company.
8. Considering, the aforesaid aspects, of the present case, this Tribunal is of the considered view that it is just and equitable to restore the name of the Company **M/s. J K AGRO IMPEX PRIVATE LTD** .,in the Register of the Registrar of Companies maintained by the ROC, Ahmedabad, Gujarat for making statutory compliances and to remove defects of disqualification, if any, as Shareholders imposed under Section 164(2) of the Companies Act, 2013.
9. Therefore, the appeal is allowed in terms of its relief clause. Consequently, the ROC, Ahmedabad, Gujarat is directed to restore the name of the Company in the Register of the Registrar of the Companies, However, on making compliance ^{of} the following conditions by the appellant.

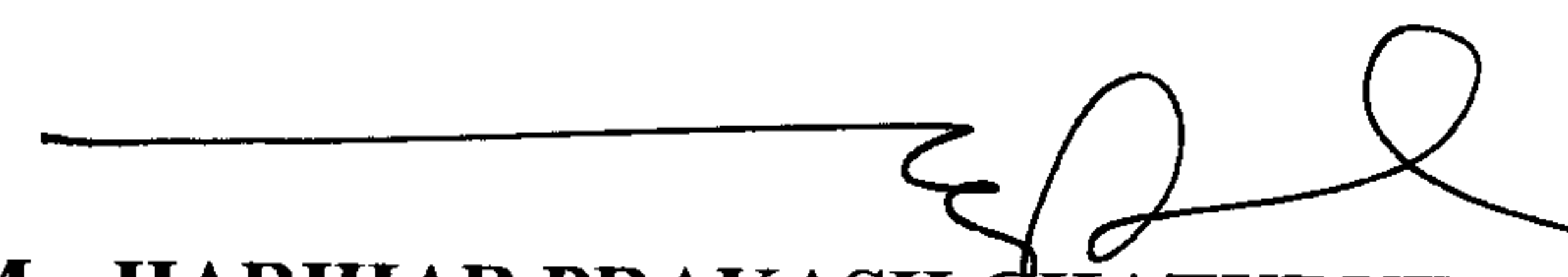
John

[Signature]

- (i) *The Appellant shall file all over due statutory returns with fee and additional fee as required under the Companies Act; and other laws within stipulated period stated therein, or within 90 days from the receipt of an authentic copy of this order and after restoration of its name in the Register of ROC, Gujarat.*
- (ii) *The Appellant shall publish a Notice in leading newspapers circulating in the District as well as in the Official Gazette of the Government of India with regard to the restoration of the name of the Company in the Register of Companies maintained by the Office of the Registrar of Companies, as per the draft notice approved by the Registrar of Companies at the expenses of the Appellant;*
- (iii) *The Appellant shall also pay cost for an amount of Rs. 25,000/- (Rupees Twenty Five Thousand Only) payable to the Central Government, Ministry of Corporate Affairs through Office of the ROC, Gujarat by way of Demand Draft drawn on Nationalised Bank towards the cost incurred by the Government in striking off the name of the Company, within 3 (three) weeks from the date of this order and shall file compliance.*

10. With the above stated direction and observations the present Co. Appeal is allowed and stands disposed of accordingly.


Ms. MANORAMA KUMARI
(MEMBER JUDICIAL)


Mr. HARIHAR PRAKASH CHATURVEDI
(MEMBER JUDICIAL)