

3

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH**

PRESENT: HON'BLE SHRI RATAKONDA MURALI- MEMBER JUDICIAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 06.09.2018 AT 10.30 AM

| | |
|----------------------------------|----------------------------------|
| TRANSFER PETITION NO. | |
| COMPANY PETITION/APPLICATION NO. | CA No.837/252/HDB/2018 |
| NAME OF THE COMPANY | Niryath Logistics Pvt Ltd |
| NAME OF THE PETITIONER(S) | Niryath Logistics Pvt Ltd |
| NAME OF THE RESPONDENT(S) | Registrar of Companies Hyderabad |
| UNDER SECTION | 252 |

Counsel for Petitioner(s):

| Name of the Counsel(s) | Designation | E-mail & Telephone No. | Signature |
|------------------------|-------------|------------------------|-----------|
| | | | |
| | | | |

Counsel for Respondent(s):

| Name of the Counsel(s) | Designation | E-mail & Telephone No. | Signature |
|------------------------|-------------|------------------------|-----------|
| | | | |
| | | | |

ORDER

Orders pronounced vide separate orders.


Member (J)

Binnu

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD**

CA No. 837/252/HDB/2018

U/s 252 of Companies Act, 2013

In the matter of M/s. Niryath Logistics Private Limited

M/s. Niryath Logistics Private Limited,
Registered Office:
Flat No:304, Jayadarshini Arcade, Road No.1,
Alkapuri Colony, Rk Puram, Dilsukhnagar,
Hyderabad- 500035.

.....Applicant

VERSUS

The Registrar of Companies
Andhra Pradesh & Telangana
2nd Floor, Corporate Bhawan
GSI Post, Tattiannaram, Nagole, Bandlaguda
Hyderabad – 500068.

...Respondent

Order pronounced on 06th September, 2018

Coram

Hon'ble Shri RatakondaMurali, Member (Judicial)

Counsels / parties present:

For the Applicant Company: A.Padmasri,
PCS.

For the Respondent: Shri T. Sujan Kumar Reddy
and Ms. G. Suma, CGSC

Per: Hon'ble Shri Ratakonda Murali, Member (Judicial)



Heard on 8.08.2018, 28.08.2018.

ORDER

1. The Applicant Company M/s. Nirvath Logistics Private Limited has filed the present Application under Section 252 of the Companies Act, 2013, with a prayer for issuance of directions to the Registrar of Companies, Hyderabad to restore the name of the Applicant Company in the Register of Companies and to pass such order as deemed fit in the circumstances of the case.
2. The averments made in the Company Application are briefly described hereunder:-
 - a. The Applicant Company was incorporated under the Companies Act, 1956 on 19.06.2013 as a private Limited Company with Registrar of Companies, Andhra Pradesh and Telangana. Its registered address is same as mentioned in the cause title.
 - b. The main objects of the Applicant Company are to establish, organize, manage, run and to do business of fleet carriers, transporters in all its branches on land, air, water and space for transporting goods, articles or things on all routes and lines on National and International level.
 - c. The Authorized Share Capital of the Applicant Company is Rs.1,00,000/- (Rupees One Lakh only) divided into 10,000/- (Ten Thousand Only) Equity shares of Rs.10/- (Rupees Ten only) each. The Issued, Subscribed and Paid-up Capital of the Company as on the date of this Application is Rs.1,00,000/- (Rupees One Lakh only) divided into 10,000 (Ten Thousand Only) equity shares of Rs.10/- (Rupees Ten



only) each fully paid-up, and there are no different classes of shares.

- d. It is averred in the Company Application that, the Company is regularly filing income tax returns with the income tax department.
- e. It is averred in the Company Application that, the Company is carrying on business on a going concern but due to some operational issues the Company was not able to file the financial statements and Annual returns with in time.
- f. The Applicant Company further avers that it has filed an Affidavit by the Director of the Company for and on behalf of the Company, in connection with cash transactions in the Company during the Demonetization period (08.11.2016 to 30.12.2017).
- g. It is further averred that the Applicant Company has enclosed the following documents giving justification / substantiating that the Company has been operational as under:-


- (1) Certificate of incorporation.
- (2) Certified copies of memorandum and Articles of Association of the Company (Pages 20-39).
- (3) Audited Financial Statements (Page No 63 to 152).
- (4) Income tax returns. (Page No: 43-62)
- (5) Demonetization Affidavit.

The PCS for the Applicant Company has stated that the Company has filed the Application within the limits laid down under Section 252 (3) of the Companies Act, 2013.

3. The Registrar of Companies Hyderabad /Respondent herein denied all the averments made in the Application except those



which are specifically admitted herein and submitted his report vide memo No. ROCH/ LEGAL/ SEC252/088465/NLPL/ MSN(JTA)/2018 dated 27.08.2018 stating as follows:-


- (1) The Company did not file the annual accounts and annual returns since incorporation hence the company was identified for strike off u/s 248(1) and STK-1 notice was issued to the company and its directors and STK-5 notice dated 05.05.2017 was issued and published in the Gazette and a paper publication was also issued informing all the stake holders about STK-5 notice published in MCA website. Thereafter Company was marked strike off in MCA portal and STK-7 notice was also published in the Gazette on 19-08-2017
 - (2) The Respondent further states that it has no objection if the Tribunal considers the present Application for restoration of the name of the Company back to the Register of Companies U/s 252 of the Companies Act, 2016 subject to such conditions as specified therein.
 - (3) The Respondent further states that the Tribunal may direct the Applicant Company to ensure statutory compliance under applicable provisions of the Companies Act, 2013 without any delay in future.
 - (4) Respondent has also urged this Tribunal to direct the Applicant Company to file a declaration from the Directors of the Company regarding deposit of cash in banks during the demonetization period.
 - (5) Respondent further stated that this Tribunal may award cost of the proceedings in favour of RoC and direct the Applicant Company to pay the cost through online payment in www.mca.gov.in .
 - (6) Section 252 (3) stipulates that
- 

“Section 252(3): If a Company, or any member or creditor or workman thereof feels 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 restored 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.”

I have heard the PCS for the Applicant Company, who contended that, the Applicant Company is doing its business on a going concern basis. Further PCS contended that the Company is carrying out its business successfully from the date of incorporation and also the Company is regular in filing the Income Tax Returns with the Income Tax Department.

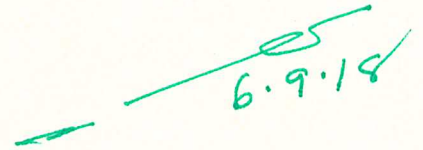
- h. Further, I have seen the latest Balance sheet as on 31st March 2017 of the Applicant Company. The Applicant Company is having current assets at Rs.8,51,871 /- .I have also seen the profit and loss account for the year ended 31.03.2017. The Company is having Revenue from operations and other Income at Rs.64,972/- .

After hearing the PCS for the Applicant Company and after perusal of material documents on record, the report of the RoC, Hyderabad and after going through the provisions of Section 252 (3) of the Companies Act, 2013, this Tribunal is of the view that the Company was in existence and it is a going concern and name of Company to be restored in the Register of Companies as maintained by RoC.

4. By exercising the powers conferred on this Tribunal under Section 252 of the Companies Act, 2013, and Rule 87-A of NCLT (Amendment) rules 2017, R/w NCLT Rules, 2016, the Company application bearing CA No.837/252/HDB/2018 is disposed of with the following directions:
- 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 and take all consequential actions like change of company's status from 'strike off' to Active (for e-filing), to restore and activate the DINs if applicable, to intimate the bankers about restoration of the name of the company so as to defreeze its accounts.
 - 2) The Applicant company is directed to file all the statutory document(s) along with prescribed fees/ additional fee/fine as decided by RoC within 30 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 application 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 20,000/-(Rupees Twenty Thousand 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 CA No.837/252/HDB/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, Hyderabad 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 led 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 /offences, if any, committed by the applicant company prior or during the striking off of the company.

A handwritten signature in green ink, consisting of a stylized 'R' followed by a horizontal line and a checkmark-like flourish.

RATAKONDA MURALI
MEMBER (JUDICIAL)