

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

CP No.: 1042/252/NCLT/MB/MAH/2018

Under section 252 of the Companies Act, 2013

In the matter of

Dynamix Machining Solutions Private Limited,
A ¼, Niwas Ratna, Mahesh Nagar, S.V. Road,
Goregaon West, Mumbai-400062

Through its Director

Mr. Sunil Ramanlal Desai

....Petitioner

v.

Registrar of Companies, Mumbai

..... Respondent

Date of Hearing: 04.09.2018

Order delivered on: 05.09.2018

Coram :

Hon'ble M. K. Shrawat, Member (J)

For the Petitioner :

Advocate Dharmesh J. Shah i/b GMS Legal.

For the Respondent :

None Present.

Per : M. K. Shrawat, Member (J)

ORDER

1. This present petition/application has been filed on 05.04.2018 under Section 252 of the Companies Act, 2013 (hereinafter as **Act**) by the Director of "Dynamix Machining Solutions Private Limited" (hereinafter as **Company**) praying for restoration of Company's name in the Register maintained by the Registrar of Companies, Mumbai (hereinafter as **RoC**).
2. The Company was incorporated with the RoC, Mumbai on 06.07.2006 having CIN : U51506MH2006PTC162960.
3. The name of the Petitioner Company was struck off from the Register on account of the reasons that the Company is not carrying on any business and that there was no business operation for a period of last two financial years and have not made any application within such period for obtaining the status of Dormant Company under S.

455 of the Act. Consequentially, the RoC has published a public notice for Striking off and Dissolution of Company i.e. STK – 7 dated 10.07.2017.

Submissions from the Petitioners:

4. The Learned Representative for the Petitioner submits that the company was incorporated to do the business of machining and manufacturing of tools. It is further stated that there was a dispute going on between the directors of the company, due to which the company could not start its business operations. There was no bank account opened in the name of the company. The Financial Statements of this Company could not be filed with RoC for the years 2006-07 to 2015-16 leading to a default of 10 years. Hence, the name of the company was struck-off by the ROC, which led to disqualification of the directors.
5. The Petitioner further states that once the company is revived by the order of this Tribunal, the Company will ~~be~~ ^{Application} moved under Fast Track Exit Scheme and the Petitioner ^{me} himself intends to close down this Company.
6. It is further stated that the directors being directors in some other running Companies also, seek restoration of name of this company to ROC to avail the benefit of CODS Scheme.
7. Further, the Company has not made any application for obtaining the status of Dormant Company under S. 455 of the Act. Further that, the Petitioner Company had never in the past, on its own, moved any application for Strike-off under S. 248 (2) of the Companies Act, 2013.
8. The Learned Representative further submitted that, the Petitioner Company has all the remaining documents ready and prepared and is willing to file the same before the RoC, if so permitted. Further the Petitioner Company is willing to file any other necessary document which are required by the RoC.

Submissions from the Respondent/RoC:

9. The RoC has forwarded its report stating therein that the RoC has issued the notice in Form STK – 1 to the Petitioner Company on the ground that, the Company is not carrying on any business and that there was no business operation for a period of last two financial years and have not made any application within such period for obtaining the status of Dormant Company under S. 455 of the Act. But there is no communication from the side of the Petitioner Company. Hence, consequentially the RoC has issued public notice i.e. STK – 7 dated 10.07.2017 intimating that the name of Company is been struck-off from the Register of RoC.
10. It is also submitted that, the Petitioner Company has not filed the Annual Returns and Balance Sheets with the RoC for the F. Y. 2014-2015 and 2015-2016. And as the Statutory Returns were not filed for the said period, the RoC came to conclusion that,

the Petitioner Company has ceased to its business. And consequentially the name has been struck-off from the Register of RoC.

11. However, it is further submitted in the said report that the RoC has no objection to restore the name of the Petitioner Company, if the Petitioner Company is willing to comply with the provisions of the Act, subject to imposition of Cost.

Findings:

12. That, the facts and circumstances of the case have enlightened that the relevant documents which are to be filed, are ready with the Company and the Company is willing to file the same, if so permitted. Further that, the accounts of the Company were audited and the audited accounts have been approved for the years 2006-07 to 2016-17, annexed in the petition.

13. Although the Company has not generated any revenue in the year 2017, therefore it can be said to be a non-running concern. But under the circumstances mentioned below, this Company deserves to be revived:

The Additional documents filed by the petitioner state the Master Data and the financials of the Companies in which the two directors, one Mr. Sunil Ramanlal Desai and Mr. Bhavin Bharat Padechia is holding the directorship clearly reveals that one "DESIGNCELLCAD-CAM SOLUTIONS PRIVATE LIMITED" Company is doing architecture business and is having revenue generation worth ₹1,01,04,451/- and profit amounting to ₹40,038/- in the year 2017. The above stated fact clearly reveals that the said Company having common directors is a going concern. The disqualification of directors due to strike off of this company will adversely affect the other company. Hence, the strike off of this Company may prejudice other Company.

14. It is noticed that this Petition is filed to avail the benefit of the CODS, 2018 which is floated by the Government. This Bench has passed the order of Restoration in this similar situation in CP No. 66/252/NCLT/MB/MAH/2018 namely "M/s. Health and Wellness Aadhar Private Limited" which is worth to reproduce as under :

"16. We have gone through the said CODS Scheme and the provisions of Law by which the Directors are disqualified. And we came to know that, the Directors are disqualified due to operation of Law and not by the order of any Authority. Hence, we are of the view that, since the Directors are disqualified through an operation of Law, then, they can be qualified in the eyes of Law whenever they comply with the provisions of the Act and the CODS Scheme, 2018. This order will only Restore the name of Petitioner Company in the Register of RoC. For removal of the Disqualification of the Directors they have to follow the procedure laid down by the CODS, 2018."

15. That, the Company has not opened any Bank Account in its name and therefore, the question of depositing heavy cash during the period of Demonetisation i.e. from 8th November, 2016 to 31st December, 2016, does not arise.
16. Hence, upon considering the facts and circumstances of this present petition/application, this Bench is of the view that, it would be just and proper to order restoration of the name of the Petitioner Company in the Register of Companies maintained by the RoC.
17. Accordingly, this Petition/Application is allowed. The restoration of the Petitioner Company's name to the Register of Companies maintained by the RoC Mumbai, is hereby ordered, with a direction that the Company shall comply with the Provisions of the Act. And further it will be subject to payment of costs of ₹50,000/- (Fifty Thousand Only) to be paid by way of Demand Draft in favour of "Pay and Accounts Officer, Ministry of Corporate Affairs, Mumbai", within 7 days from the receipt of the duly certified copy of this Order, to this office. Consequentially thereupon the Bank Account/s if freezed shall get defreezed and to be operated by the Petitioner Company.
18. This Petition bearing No. 1042/252/NCLT/MB/2018 is, therefore, disposed of on the terms directed above. The Learned RoC shall give effect of this Order only after perusal of the Compliance report of cost imposed. The Company is directed to file all the required documents and shall fulfil other relevant statutory compliances within 30 days from Restoration of its name in the Register of Companies maintained by RoC.
19. Ordered accordingly. To be consigned to Records.

Dated : 05.09.2018

SD/-
M. K. SHRAWAT
MEMBER (JUDICIAL)