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**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

Co. Appeal No. 71/252(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 05.04.2018**

Name of the Company: Sage Minerals Pvt Ltd
V/s.
ROC, 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>
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ORDER

None is present for the Appellant. None is present for the ROC.

The order is pronounced in the open court. Vide separate sheets.


**MANORAMA KUMARI
MEMBER JUDICIAL**


**HARIHAR PRAKASH CHATURVEDI
MEMBER JUDICIAL**

Dated this the 5th day of April, 2018.

**BEFORE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH**

Co. Appeal No. 71/252(3)/NCLT/AHM/2018

In the matter of:

M/s. Sage Minerals Private Limited,
Block No. 52, Sonar Pada HP Petrol Pump,
Tal. Songadh, Dist. Tapi Songadh,
Surat-394670
Gujarat.

: Appellant.

Versus

The Registrar of Companies, Gujarat,
ROC Bhavan, Opp: Rupal Park Society,
Behind Ankur Bus Stop, Naranpura,
Ahmedabad-380013.

: Respondent.

Order delivered on March, 2018.

**Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (J) –
And
Hon'ble Ms. Manorama Kumari, Member (J).**

Appearance:

Mr. Dhiren Dave, learned PCS for the Appellant.

None present for the Registrar of Companies.

ORDER

[Per: Hon'ble Ms. Manorama Kumari, Member (Judicial)]

1. This Appeal is filed by the Company under Section 252(3) of the Companies Act, 2013 through its Director vide Resolution dated 3rd February, 2018 seeking restoration of its name M/s. Sage

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Minerals Private Limited, in the Register of Companies maintained by the Registrar of Companies, Gujarat, Ahmedabad ["ROC" for short].

2. The facts in brief, which necessitated the Appellant Company to file this Appeal, are as follows;

2.1. It is stated that the ROC vide Public Notice No. ROC/STK/5A dated 25.4.2017 issued in Form No. STK-5 followed by Notice No. ROC/AHMD/248(5)/STK-7/PUB/1 dated 21st June, 2017 issued under sub-section (5) of Section 248 of the Companies Act has struck off the name of the Company from the Register of Companies inter alia on the ground that the Company has not been carrying on any business or operation for a period of two immediately preceding financial years and have not made any application within such period for obtaining the status of dormant company under Section 455.

2.2. Appellant, who is/was one of the Directors/Shareholders of the Company, submitted that 'DIN' of the Company's Directors has been de-activated by the Ministry of Corporate Affairs ['MCA'] as the Company is not an active Company. The Company has not opened any Bank account since its incorporation nor has filed any Income Tax Return since incorporation.

2.3. It is further stated by the Appellant Company that it has come to know that the MCA has come out with the Condonation of

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Delay Scheme, 2018, which is annexed as Annexure "F" to the Appeal, regarding activation of the DIN of Directors in case of companies which are struck off and as such the Company has decided to prefer this Appeal with the sole intention to activate the DIN of existing Directors which will enable them to close the Company again after filing all the documents.

2.4. The Appellant has submitted that it was not doing any business and as the Appellant Company was defunct it could not upload the Application for closure of the Company. The Appellant further stated that the Company was unaware about the previous notices issued by the ROC as it was not doing its normal business and all set to file application for closure of the Company.

2.5. It is further stated by the Appellant Company that it has come to know that the MCA has come out with the Condonation of Delay Scheme, 2018, which is annexed as Annexure "F" to the Appeal, regarding activation of the DIN of Directors in case of companies which are struck off and as such the Company has decided to prefer this Appeal with the sole intention to activate the DIN of existing Directors which will enable them to close the Company again after filing all the documents.

3. On Notice being issued and the order being served on the ROC, the ROC has filed Representation dated 15th March, 2018

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[Signature]

through his Deputy Registrar wherein he has denied the allegations and contentions raised in the Appeal, and represented that as the Company has failed to file its statutory returns, viz., Balance Sheets and other Returns since incorporation and therefore action was initiated and its name was struck off.

4. We have gone through the Appeal and the documents annexed thereto. It appears that the Company is not a going Company and as such the Deponent wants to close the Company by filing the required documents before the MCA, but since the Company has already been struck off before the filing of the Application for closure, the Appellant filed this Appeal before this Tribunal for activation of 'DINs' of Directors of the struck off Company.

5. In the context of the issue relating to restoration of the defunct Company's name to the Registrar of Companies and the circumstances in which the Company Court can exercise its power, it is necessary and expedient to refer to the following decision rendered by the Hon'ble High Court of Andhra Pradesh;

5.1. The Hon'ble Andhra Pradesh High Court in the Judgment delivered in the case of **Velamati Chandrasekhara Janardan Rao** (*Supra*), in Para No. 11 has held as follows;

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"11. In *M.A. Panjwani v. Registrar of Companies and another*, considered 4 scope of Section 560(6) and the meaning of words 'otherwise just' held as follows;

11. Under sub-section (6) of Section 560 of the Companies Act, 1956 the company court has the power to order restoration of the company's name to the registrar of companies on the application made by the company itself or its member or creditor. Such an application can be made at any time before the expiry of 20 years from the publication of the notice for striking off the name published in the official gazette. There are only two circumstances in which the company court can exercise the power. The first is when it is satisfied that the company was, at the time of striking off its name from the register, carrying on business or was in operation. The second circumstance is when it appears to the company court that it is "otherwise just" that the name of the company restored to the register. Obviously petitioner is not the company itself therefore, he has to be either a member creditor. It was submitted on behalf of ROC that the petitioner is neither member nor a creditor of the company.

14. Quite apart from the above position, the sub-section recognises that if the Court is of opinion that it is "otherwise just" that the company be restored to the register, restoration can be ordered. The argument addressed on behalf of the ROC to the effect that the word "just" has to be understood in the background of the specific language of the sub-section on the basis of the principle of *eiusdem generis* does not appeal to me. As I read the sub-section, there are two situations in which the company court can order restoration. One is when the company was carrying on business or was in operation at the time of striking off its name. The second situation, which is an alternative situation, is one where it appears "just" to the company court that the name of the company be restored to the register. I do not see any scope for the application of the rule of *eiusdem generis* because of the presence of the words "or otherwise" between the words providing for the two types of situations. The presence of the words "or otherwise" denotes that even if the company was not carrying on any business or was not in operation at the time of striking off, it is still open to the company court to order restoration if it appears to the Court to be "otherwise just".

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I may add that the words "or otherwise" have not been generally construed ejusdem generis as seen from the judgments of the Supreme Court in *Lilawati Bai v. State of Bombay*: (AIR 1957 SC 521) and *Kavatlappara Kottarathil Kochuni v. State of Madras*: (AIR 1960 SC 1080).

15. In *Helen C. Rebella v. Maharashtra S.R.T.C.*: (1999) 1 SCC 90, it was observed by the Supreme Court that the word "just" denotes equitability, fairness and reasonableness having a large peripheral field. In understanding its scope, one must take into account all the facts and circumstances of the case and then decide what would be just and equitable. In *M.A. Rahim and another v. Sayari Bai*: (AIR 1973 Mad.83) it was held by a Division Bench of the Madras High Court that the word "just" connotes reasonableness and something conforming to rectitude and justice, something equitable and fair. In *Sidhant Garg and another v. Registrar of Companies and others*: (2012) 171 Comp.Cas.326 it was held by this Court (Manmohan, J.) that the word "just" would mean that it is fair and prudent from a commercial point of view to restore the company and that the Court has to examine the concept of "justness" not exclusively from the perspective of a creditor or a member or a debtor, but from the perspective of the society as a whole. The special facts of the present case attract this principle. The respondent has received monies from the petitioner. He was entrusted with the job of finding a house for the petitioner in Delhi. The averments in the petition prima facie indicate that the property "Jodhpur Gardens" was purchased not in the name of the petitioner but in the name of the company. The shares held by the petitioner in the company were also taken away from him without his knowledge or consent. The settlement entered into between Quli and Singhania by which the shares were transferred to Quli was held by this Court to be collusive. These are disputes which are pending in the trial court. The company is a defendant in the trial court. If its name is not restored, it would cause injustice to the petitioner and also cause prejudice to the trial as a whole. The message sent to the society as a whole, if the name of the company is not restored to the register, would be quite disturbing. The petitioner has to be protected in the litigation pending before the trial court. As observed by the Indore Bench of the Madhya Bharat High Court in *Bhogi Lai Chimun Lai v. Registrar, Joint Stock Companies*: AIR 1954

M.B. 70, the effect of the order of the Registrar of Companies striking off the name of the company from the register would be that the company will be deemed to be dissolved and it may be difficult for the petitioner to obtain any relief in the suit pending before the trial court. It is not also known whether the company had brought to the notice of the ROC about the pendency of the litigation in the trial court. If it had, perhaps the ROC would not have struck off the name from the register."

6. Considering all the aforesaid aspects, this Tribunal is of the considered view that it is just and equitable to restore the name of the Company, M/s. Sage Minerals Private Limited, in the Register of Companies maintained by the ROC, Gujarat, Dadra & Nagar Haveli.

7. In view of the above, this Appeal is allowed. The Registrar of Companies, Gujarat, Dadra & Nagar Haveli is directed to restore the name of the Company, M/s. Sage Minerals Private Limited to the Register of Companies upon the Appellant's complying with the following conditions;

(i) The Appellant shall file all over due statutory returns with fee and additional fee as required under the Companies Act;

(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


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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 an amount of Rs. 10,000/- to the Ministry of Corporate Affairs 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.

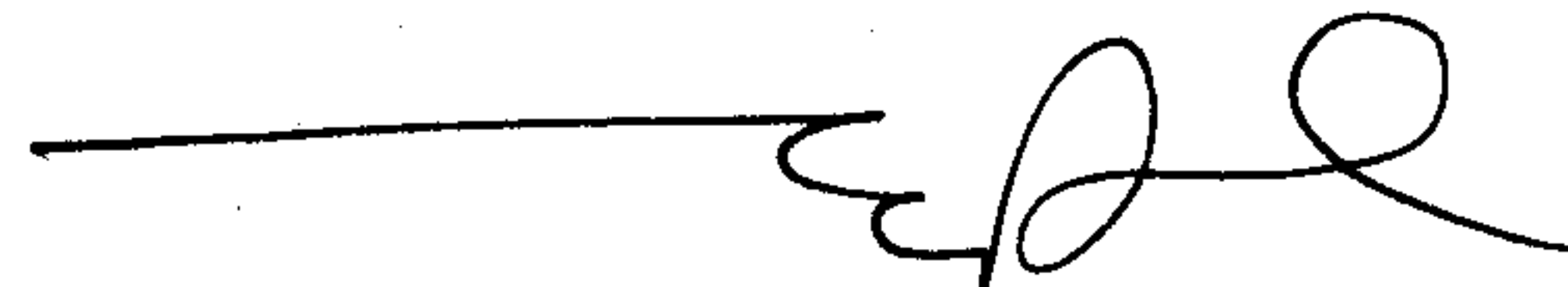
8. The Appeal stands disposed of accordingly.

Signature:



**Manorama Kumari,
Member (Judicial)**

Signature:



**Harihar Prakash Chaturvedi,
Member (Judicial)**

Rmr..