

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

CP(Appeal) NO. 531/KB/2018

In the matter of:

Section 252(3) of the Companies Act, 2013 and national Company Law Tribunal Rules, 2016 and Rule 87A of the National Company Law Tribunal Amendment rules, 2017

And

In the matter of:

M/s. JUGMUG TRADELINK PRIVATE LIMITED, a Company incorporated under the Companies Act, 1956 and having its registered Office at 18, NS Road, Backgate, 1st Floor, Kolkata – 700 001

.. Struck-Off

And

Mrs. Padma Devi Daga, Shareholder(holding 2500 Equity share) of M/s. JUGMUG TRADELINK PRIVATE LIMITED residing at 12D, Chakraberia Road(North), Flat 5B, Kolkata – 700 020

.... Petitioner

-Versus-

The REGISTRAR OF COMPANIES (West Bengal), II MSO Buildings, 2nd Floor, 234/4, AJC Bose Road, Nizam Palace, Kolkata – 700 020, West Bengal

.. Respondent

Coram: Mr. Jinan K.R., Member(Judicial)

For the Appellant:

1. CS Rohit Kumar Keshri
2. CS Sneha Agarwal

Ms. Ishani Pandya, Assistant Registrar of Companies, West Bengal

Date of Pronouncement of Order: 14-09-2018

O R D E R

Per Shri Jinan K.R., Member (Judicial)

1. This is an Appeal preferred under section 252(3) of the Companies Act, 2013 by M/s. Jugmug Tradelink Private Limited represented by one of its Shareholders, Mrs. Padma Devi Daga for restoration of the name of the Appellant Company in the Register of Companies, West Bengal.
2. The brief facts of the case for the consideration of the Appeal are the following:
3. The Appellant Company, incorporated on 08-07-2009 (the date of Incorporation is mistakenly referred to in the Appeal, in one place as 8th July, 2009 and in another place as 8th February, 2010. On the other hand, the Certificate of Incorporation shows the date of Incorporation is on 8th July, 2009). The Appellant Company is a going concern. The Registered Office of the company is situated at 18, NS Road, Backgate, (1st Floor), Kolkata-700 001. The present Authorised Share Capital of the Company is Rs. 2,00,000/- (Rupees Two lakhs only) divided into 20,000 (Twenty Thousand) Equity Shares of Rs. 10/- (Rupees

Ten only) each. The present issued, subscribed and paid up Share Capital of the Company is Rs. 1,25,000/- (Rupees One Lakh Twenty five thousand only) divided into 12,500 (Twelve Thousand Five Hundred) Equity Shares of Rs. 10/- (Rupees Ten Only) each. Since its incorporation, the Company was doing the business of trading, buying, selling, marketing of home care products, consumer goods, household goods etc., and is carrying on the same business activities at present and the same is evident from the Balance sheet, profit and loss account of the Company which are annexed with the Appeal.

4. The Company is a going concern. The Company has been audited every year. All necessary documents including the balance sheet, auditor's report and the profit and loss account are ready with the Company for submission before the Respondent. To the surprise of the Appellant, the name of the Company has been struck off from the Register of Companies, West Bengal maintained by the Respondent. When it was brought to the notice of the Appellant, the Company representatives approached the Respondent but learnt that returns and financial statements could not be uploaded because of the striking off of the name of the Company.

5. The Appellant Company failed to submit the financial statement and the annual returns for the financial year 2013-2014 to 2016-2017 due to inadvertent mistake and lack of knowledge of the person authorised to look after the filing of the same. The person in-charge of looking after the compliance and following up with the Registrar of Companies, West Bengal left Office on medical ground without any intimation. The Company also has active Bank account in the HDFC Bank. The Company is also filing Income-Tax Returns. Without the name of the Company in the Register of Companies, West Bengal, the Company is losing the legal status of a Company to run the deal today and the business activities and therefore, the Appellant prays for restoration of the name of the Company in the Register of Companies, West Bengal.

6. The Respondent, Registrar of Companies, filed report contending in brief the following:

7. As per the available records maintained by the Office of the Registrar of Companies, West Bengal, M/s. Jugmug Tradelink Pvt Ltd was incorporated on 08-07-2009 and the aforesaid Company was struck off on 09-06-2017 after complying with the provision of section 248 of the Companies Act, 2013. The Registrar of Companies had issued notices to the Companies as well as the Directors under Section 248(1) (in e-form STK-5) of the Companies Act, 2013 read with Rule 7 of the Companies(Removal of names of Companies from the Register of Companies) Rules, 2016 for removal of name of the company from the Register of the Companies as there was reasonable cause to believe that the Company was not functioning or was not in operation for the period of two(2) immediate preceding financial years and has not made any application within such period for obtaining the status of dormant company under section 455 of the Companies Act, 2013.

8. Further, it is submitted that due to non-filing of statutory returns by the company, the competent authority drew an opinion that the Company was not carrying on business or was not in operation. Further, it is submitted that as per the provisions of section 248(5) of the Companies Act, 2013, at the expiry of the prescribed time period, since no response had been received from the company and the public, notice (in STK No.7) dated 30-06-2017 was issued by the Registrar of Companies, West Bengal reflecting the name of the company, as struck off w.e.f. 09-06-2017. The petitioner company's name appears at Sl. No. 3368 of the Registrar of Companies notice(STK-7) dated 30-06-2017 and the same was published in the official Gazette on 15-07-2017.

9. Upon the said contentions, the respondent prays for passing appropriate order as deemed fit and proper considering the merits of the Appeal.

10. The Appellant filed the rejoinder to the report filed by the ROC, WB contending that the Respondent arrived at a conclusion without any supporting evidence and the allegations leveled by the Respondent are baseless and reiterated the contentions taken in the Appeal and prays for allowing the Appeal.

11. Heard the Ld. PCS appearing for the Appellant as well the Assistant Registrar of Companies, West Bengal.

12. This is an Appeal preferred by a Shareholder of the Appellant Company, namely, Jugmug Tradelink Private Limited for restoration of the name of the Company in the Register of Companies, West Bengal. Admittedly, the Appellant Company defaulted in filing financial statements and the annual return from the financial year starting from 2013 to 2017. There was no challenge at the time of arguments, advanced on the side of the Appellant against the service of notice allegedly issued by the ROC, WB under Section 248. The contention on the side of the ROC, WB shows that in compliance with Section 248 of the Companies Act, 2013, the Registrar issued all the three notices STK-1, STK-5 and STK-7 and for want of reply from the Appellant Company, struck off the name presuming that non-filing of the return continuously for more than two years leads to an inference that the Company is not in operation. The presumption arrived at by the Registrar that the Company is not in operation for want of filing the returns for more than two consecutive years is, therefore, found legally sustainable. There is no irregularity or illegality brought out at the time of hearing in regard to striking off the name of the Company by the Respondent.

13. The Appellant attempted to establish that the Company is a going concern and was doing trading business in Home care products and to strengthen the said contentions referred to the balance sheet, annual return, Income-Tax returns, acknowledgments and the statements of Bank accounts. The financial statements for the years starting from 2014 to 2017 have been screened at length. The data available in the balance sheets enabling me to hold that the Company is a going concern is shown below :-

F.Y Ending	Asset	Liability	Turnover	Profit & Loss
31-03-2014	65,12,179=00	65,12,179=00	65,439=00	(58,693=00)
31-03-2015	65,04,423=00	65,04,423=00	1,47,782=00	(7,756=00)
31-03-2016	65,03,930=00	65,03,930=00	1,60,343=00	(494=00)
31-03-2017	64,95,884=00	64,95,884=00	1,72,712=00	(8,046=00)

14. The above Table indicates that the Company is doing business. Though the company is running loss, the Company is found filing Income Tax returns and also operating Bank Account. The Directors reports, the copy of minutes also strengthened the contention on the side of the Appellant that it is a going concern. However, the averment in the Appeal that due to inadvertent mistake and lack of knowledge of the person authorised to look after the filing of the annual returns and the financial statement the Company was unable to file the return in time is found unbelievable and unacceptable in the absence of supporting proof. The Company was incorporated in the year 2009 and fairly submitted the return till the financial year ending 2013. Abruptly it stopped doing so from the financial year 2014 onwards alleging that the person who was in-charge of filing the returns left the Office on medical ground. The said reason of a Company like the Company in hand cannot be accepted because they are statutorily bound to file the return and the plea of ignorance is not a valid excuse. However, being found that the Company was in operation on the date of the striking off of the name of the Company, the Appeal is liable to be allowed restoring the name of the Company subject to payment of cost of Rs. 50,000/- (Rupees Fifty Thousand only). Awarding the cost of Rs. 50,000/- in the case of this nature is fair and just.

15. In the result, the appeal is allowed invoking the power of this Tribunal under Section 252(3) of the Companies Act, 2013 upon the following directions:

- (i) The Registrar of Companies, the respondent herein, is ordered to restore the original status of the Appellant Company as if the name of the company has not been struck off from the Register of Companies with resultant and consequential actions like changing status of Company from 'strike off to Active; to activate DIN Nos of the applicants etc.
- (ii) The Appellant company is directed to file all pending statutory document(s) including Annual Accounts and Annual returns for the financial years 2013-2014 to 2016-2017 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;
- (iii) The Company's representative, who has filed the Company appeal on behalf of the Appellant Company, is directed to personally ensure compliance of this order.
- (iv) The restoration of the Company's name is also subject to the payment of cost of Rs 50,000/- (Rupees Fifty 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 CP(Appeal) No. 531/KB/2018".
- (v) The appellant is permitted to deliver a certified copy of this order with ROC within thirty days of the receipt of this order.
- (vi) On such delivery and after duly complying with the above directions, the Registrar of Companies, West Bengal is directed to, on his office name and seal, publish the order in the official Gazette;

- (vii) This order is confined to the violations, which ultimately leads to the impugned action of striking off the name 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 appellant company prior or during the striking off of the company.

16. The CP (Appeal) No. 531/KB/2018 is disposed of accordingly.

17. Urgent certified copy of this order, if applied for be issued upon compliance with all requisite formalities.

A red rectangular box containing the handwritten signature 'Sd' in blue ink.

(Jinān K.R.)
Member(Judicial)

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