

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

C.P. (Appeal) No.28/KB/2018

Coram: Mr. Madan B. Gosavi, Member (Judicial)

In the matter of

An application under Section 252 (3) of the Companies Act, 2013 for restoration.

And

In the matter of:

MOHINI MANSION LIMITED (Company Name Struck Off by Registrar of Companies, West Bengal) having its registered office P-15 India Exchange Place Extension, Kolkata 700 073 in the state of West Bengal, within the aforesaid jurisdiction;

And

In the matter of:

Mr. ANIL KUMAR TODI son of Mr. Niranjana Lal Todi, address at 2 Queens Park, Kolkata 700 019 in the state of West Bengal, within the aforesaid jurisdiction.

... Petitioner

And

In the matter of:

REGISTRAR OF COMPANIES, WEST BENGAL, having its office at Nizam Palace, 2nd M.S.O. Building, 2nd Floor, 234/4 A.J.C. Bose Road, Kolkata 700 020, within the aforesaid jurisdiction.

.... Respondent

Counsel on Record:

Ms. Rakhi Shroff, Advocate] - For the Appellant.

Date of Pronouncement of Order: 18th September 2018

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ORDER

1. This is an appeal filed under Section 252(3) of the Companies Act, 2013, filed by one Mr. Anil Kumar Todi son of Mr. Niranjan Lal Todi residing at 2 Queens Park, Kolkata 700 019, an ex-director and shareholder of the appellant Company which has been struck off by the Registrar of Companies West Bengal from 16.11.2007 for non-filing of annual returns and balance sheets since incorporation seeking restoration of the Company, namely, Mohini Mansion Limited on the Register of Companies maintained by the Registrar of Companies, West Bengal.

2. The appellant Company is a Private Company limited by shares incorporated on 23rd March 1973 under the provisions of the Companies Act, 1956 having its registered office at P-15 India Exchange Place Extension, Kolkata 700 073 in the state of West Bengal. The authorized share capital of the Company is Rs.3,60,000/- (Rupees Three Lakh Sixty Thousand only).

3. The appellant contends that the Company could not file Balance Sheets since the financial year 31.03.2001 and Annual Returns since financial year 30.9.2000.

Upon receipt of the notice, the appellant Company prepared all relevant documents from the financial year ended 31st March 2001 onwards and showed its readiness to submit it before the respondents.

4. The respondent, ROC West Bengal in response to the notice issued by the Tribunal filed its affidavit in opposition contending in brief is the following:

The respondent denies each and every allegation made in the appeal memorandum except those contentions which was specifically admitted in the

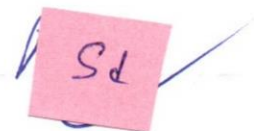
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affidavit in opposition. The respondent contends that in exercise of the power conferred upon the Registrar of Companies under Section 248 of the Companies Act, 2013 the said Registrar can strike off the name of the Company from his register after complying with certain formalities as provided by the said Section when he has reasonable cause to believe that the company is not carrying on business or in operation. The respondent has struck off the name of the Petitioner Company under Section 248 of the Companies Act, 2013 since he had reasonable cause to believe that Mohini Mansion Limited (hereinafter referred to as the 'Company') was not carrying in business in operation for a period of two (2) immediately preceding financial years. It is evident from the records that the Company has not filed its Balance Sheets and Annual Returns since 31.03.2014 before the office of the respondent. The appellant company was in receipt of notice issued by respondent Registrar of Companies (ROC) West Bengal 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 Registrar of Companies) Rules 2016 declaring its intention to remove the name of the Company from Registrar of Companies w.e.f. 16.11.2007.

As per Section 252 of the Companies Act, 2013 a struck off company can be restored only on the direction of the NCLT within a period of three (3) years from the date of the order of the Registrar. In this regard it is submitted that in terms of the said provisions the NCLT while passing an order for restoration is to be satisfied that the company is carrying on business or in operation.

5. ROC, in his report observed the following:

"4. That it is submitted that the applicant claims to be one of the directors, member and shareholder of the Company since incorporation, however, as per the incorporation documents i.e. Memorandum and Article of Association, the



applicant is not subscriber to the Memorandum and he is also not a first director as per clause 72 of the Article of Association. Moreover, the company has also not filed its statutory returns i.e. annual return since 30.09.2000, hence the claims of the applicant as to whether he is a shareholder, or any share transmitted from the director or shareholder of the company is not verifiable. Therefore, the Hon'ble NCLT may kindly put to strict proof as to the claim of the applicant and his locus standi in the appeal application.”

6. Upon the said contentions the respondent prays for passing of an order deemed fit and proper considering the objections raised by the respondent.

Heard Ld. Counsel for the appellant and perused the records.

7. One among the shareholder director of Mohini Mansion Limited, namely, Mr. Anil Kumar Todi filed this appeal under Section 252 of the Companies Act 2013 for restoration of the Company's name in the Register of the ROC West Bengal. The Appellant Company admittedly failed in submitting the annual returns and balance sheets since incorporation from the financial year ended 31st March 2001 onwards on the ground of inadvertent mistake on the part of Company as he failed in filing return in time. The appellant also admitted the receipt of notice under Section 248(1) of the Companies Act, 2013 issued by the Registrar of Companies, West Bengal. Therefore, there is no illegality or irregularity on the side of the respondent ROC West Bengal in striking off the name of the Company from the register of the respondent.

8. Regarding the point raised by ROC about the claim of the appellant being director and shareholder is not verifiable, the appellant, namely, Mr. Anil Kumar Todi submitted Rejoinder Affidavit in September 2018 affirming that he is a director and shareholder of Mohini Mansions Limited and he became a

Director of Mohini Mansions Limited since 20.12.1997. Copy of Form 32 and copies of Share Certificates are annexed with the Rejoinder Affidavit as Annexure-A.

9. It has come out in evidence that the appellant Company has not filed its statutory documents i.e. Balance Sheets and Annual Returns from 31.03.2001. In order to satisfy this Tribunal that the appellant Company is a going concern, the appellant produced the annual returns, balance sheets, directors' report, copy of Income Tax Return and statement of Bank Accounts. It is good to have a look at the financial statements and audited accounts for the year ended 2000-2001 to 2016-17 annexed with Supplementary Affidavit dated 12.09.2018. The struck off Company has also filed Income Tax Returns for the assessment year 2008-09 to 2016-17. The struck off Company has been maintaining its Bank Account.

8. A perusal of the Profit & Loss Account and Assets and Liabilities, it appears to us that the appellant Company is a going concern and doing business. The struck off Company is engaged in construction business. The financial results of the Company depict profit / (loss) figures as follows:

Financial Year ended.	Profit (Rs.)	(Loss) – Rs.
31.03.2000		2,34,904
31.03.2001		7,91,956
31.03.2002		7,94,864
31.03.2003		7,97,003
31.03.2004		8,00,875
31.03.2005		8,01,928
31.03.2006		8,04,479
31.03.2007		8,06,159
31.03.2008		8,09,685
31.03.2009		4,600
31.03.2010		4,766

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31.03.2009		4,600
31.03.2010		4,766
31.03.2011	17,666	
31.03.2012	7,070	2,000
31.03.2013		2,000
31.03.2014	27,494	
31.03.2015		2,228
31.03.2016		6,454
31.03.2017		6,926

Accordingly, upon careful screening of the documents produced from the side of the appellant, it appears to me that the appellant Company is a going concern. However, it failed in filing annual returns and balance sheets as per the provisions of the statute and thereby respondent ROC West Bengal was forced to strike off the name of the Company from the register of the Companies. However, the reason for non-filing of annual returns and balance sheets in time narrated by the appellant in the Appeal Memorandum seems to be unbelievable and unacceptable. The appellant Company is found defaulted in filing of the returns for more than 18 (Eighteen) years consecutively since its incorporation. Therefore, the appeal is liable to be allowed upon payment of cost of Rs.2,00,000/- (Rupees Two Lakhs only) which is found reasonable considering the peculiar circumstances of the case in hand.

Accordingly, I allow the appeal by exercising the powers conferred on this Tribunal under Section 252 of the Companies Act, 2013 upon the following directions:

O R D E R

- (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 with resultant and consequential actions like changing status of Company from 'strike off to Active; to activate DIN Nos of the applicants etc.

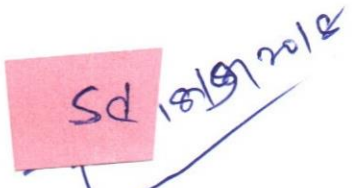
- (2) The Applicant company is directed to file all pending statutory document(s) including Annual Accounts and Annual returns for the financial years 2000-2001 to 2017-2018 along with prescribed fees/ additional fee/fine as decided by ROC within 45 days from the date on which its name is restored on the Register of companies by the ROC;
- (3) The Company's representative, who has filed the Company appeal on behalf of the Appellant Company, 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.2,00,000/- (Rupees Two Lakhs 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 Appeal No.28/KB/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, West Bengal is directed to, on his office name and seal, publish the order in the official Gazette;

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come in the way of ROC to take appropriate action(s) in accordance with law, for any other violations /offenses, if any, committed by the applicant company prior or during the striking off of the company.

The Appeal No.28/KB/2018 is disposed of accordingly.

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


(Madan B. Gosavi)
Member (J)

Signed this day of 18th September, 2018.

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