

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

Before Shri Madan B. Gosavi, Member (Judicial)

Appeal No.670/KB/2017

In the matter of:

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

-And-

In the matter of:

Companies (Removal of Names of Companies from the Register
of Companies) Rules, 2016 and other relevant Rules;

-And-

In the matter of:

Money Construction Private Limited (Company's name struck
off by the Registrar of Companies, Patna;

-And-

In the matter of:

1. Prem Nath Rat, for gain at 27, Bhusallahpur, Anchal Patna
Sadar, Patna- 800006 within the jurisdiction of the Tribunal;

.. Petitioner

-Versus-

In the matter of:

REGISTRAR OF COMPANIES Bihar, having its office at 4th floor,
'A' Wing, Maurya Lok Complex, Dak Bangalow Road, Patna- 800 001
Within the jurisdiction of this Hon'ble Tribunal;

.. Respondent

Counsel on Record:

CA Shashi Agarwal

] For the Appellant

Date of Pronouncement of Order: 10th September, 2018

Sd

ORDER

This is an appeal filed under Section 252(3) of the Companies Act, 2013, seeking restoration of the Company, Money Construction Private Limited on the Register of Companies maintained by the Registrar of Companies, Bihar.

2. The appellant's averment in brief for the consideration of the points for determination are the following:

3. Money Construction Private Limited was incorporated on 31.03.2008 under the Companies Act, 1956 as a Private Company limited by shares with the Registrar of Companies, Bihar having CIN: U45201BR2008PTC013529 to carry on the business of construction. The Company was formed in pursuance of Articles of Association having an authorized capital of Rs. 5,00,000/- divided into 5000 equity shares of Rs. 100/- each and Issued, subscribed and paid-up share capital of the company is Rs.1,50,000/- divided into 1,500 equity shares of Rs.10/- each. The company has two shareholders, each shareholders having 1,000 shares and 500 shares each respectively.

4. The Appellant avers that the Financial Statements & Annual Return for the period 31.03.2015, 31.03.2016 and 31.03.2017 of the Appellant company had not been filed with the ROC Patna due to lack of fund and the company being struck off by the RoC, Bihar. The appellant further states that with respect to compliance of the Companies Act and default in non-filing of the annual returns with the respondent and in compliance of its statutory obligations, the ROC, Bihar had *suo motu* struck off the name of the company from its register from 14th July, 2017 and without its restoration in the register of ROC, the company is unable to operate its day to day business activities due to losing its legal status. RoC had a reasonable cause to believe that the company was not

functioning or in operation for the period of last two immediate preceding financial years. Hence, the appellant filed this appeal for restoration of the company's name in the register of the RoC, Bihar under section 252 of the Companies Act, 2013.

5. The appellant vide supplementary affidavit dated 11.04.2018 submitted the Directors report, Income Tax Acknowledgement for the years 2013-14 to 2017-18 and the bank statement marked as "Annexure-A, B and C" respectively. The appellant further vide affidavit dated 18.06.2018 submitted audited accounts for the year ended 31.03.2012 and 31.03.2013 and for the year ended 31.03.2014, 31.03.2015, 31.03.2016 and 31.03.2017. The copies of income-tax acknowledgement for the year ended 31.03.2012 to 31.03.2017 have also been annexed vide annexure "B" and Bank statement as Annexure "C" respectively.

6. ROC, Bihar filed an Affidavit-in-Opposition in reply to the petition filed by the appellant contending in brief the following:

7. The RoC, Bihar in exercise of the power conferred upon the RoC under section 560(5) of the Companies Act, 1956 corresponding to section 248 of the Companies Act, 2013, has struck off the name of the appellant company since he had reasonable cause to believe that the company was not functioning or in operation for the period of several years and not filed annual statutory returns as per the Companies Act, 1956 since the financial year 31.03.2012, 31.03.2013 and 31.03.2015. The RoC, Bihar also stated in his report that the company was struck off under section 560 of the Companies Act, 1956 and not under the provision of section 248(1) of the Companies Act, 2013. ROC further stated in the report that the Tribunal may give directions for the revival of the Company under Section 560(5) of the Companies Act, 1956 corresponding to

section 252 of the Companies Act, 2013 upon filing of all due Statutory Returns. In this regard, it is submitted that in terms of the said provisions, the Hon'ble NCLT, while passing an order for restoration, is to be satisfied that the company is carrying on business or in operation. Upon the said contentions, the ROC, Patna prays for passing appropriate orders as may deem fit and proper in the case of this nature.

8. Heard the Ld. CA appearing for the appellant and perused the records.

9. Money Construction Private Limited represented by the shareholders of the company filed this appeal under Section 252(3) of the Companies Act 2013 for restoration of the Company's name in the Register of the ROC, Bihar. The Company has been incorporated on 31.03.2008 and according to the appellant, it is carrying on its business since incorporation and failed in submitting annual returns, balance sheets and thereby the Registrar of Companies Bihar had suo motu struck off the name of the company and, therefore, the present appeal is filed. According to the Ld. CA appearing for the appellant, the company is carrying on its business activities since its incorporation till today and the company is regularly carrying on business progressively and if the company's name is not restored, irreparable loss and prejudice would be caused to the appellant company and it prays for restoration.

10. The appellant has further averred that they could not file its financial statements and balance sheets for the financial years ended on 31.03.2015, 31.03.2016 and 31.03.2017 before the Registrar of Companies, Bihar. However, copies of the Income Tax returns have been submitted and the audited accounts for the above-said years have now been prepared and produced and annexed with the petition. It is good to have a look at the financial position for the financial year 2013-14, 2014-15, 2015-16 and 2016-17 annexed to the

petition. Following are the data available from the balance sheets and profit and loss accounts for the above said year.

Financial Year Ending	Assets (Rs.)	Liabilities (Rs.)	Turnover/ Revenue (Rs.)	Profit
31.03.2014	8,23,838.00	8,23,838.00	8,67,496.00	30,167.00
31.03.2015	1,39,48,684.00	1,39,48,684.00	1,46,89,783.00	5,12,099.00
31.03.2016	86,87,846.00	86,87,846.00	1,99,56,170.49	7,88,743.00
31.03.2017	77,64,356.11	77,64,356.11	13,24,907.00	35,924.11

11. The above table clearly shows that there is revenue/Turnover from operation and there is profit as shown above. It is also the fact that the Company was doing business and the company is in operation and it is not earning profit for the time being. Further, in view of the principles of natural justice, the company should be given one more opportunity to be restored to continue its business. However, I am not convinced with the reasons highlighted by the appellant in non-filing of the financial statements and annual returns consecutively for more than three years and sleeping over their rights in not filing return and not even replying to the notice issued by the ROC under Section 248.

12. Therefore, it appears to me that this appeal is liable to be allowed upon payment of a cost of Rs.50,000/- (Rupees fifty thousand only). Considering the peculiar nature and circumstances of the case, awarding a cost of Rs.50,000/- seems to be fair and just.

13. In the result, the appeal is allowed by exercising the power conferred on the Tribunal under Section 252 of the Companies Act, 2013 upon the following directions:-

- (1) The Registrar of Companies, Patna, Bihar, the respondent herein, is

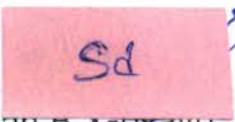
ordered to restore the original status of the Appellant Company as if the name of the company has not been struck off from the Register of Companies with resultant and consequential actions like changing status of Company from 'strike off to Active; to activate DIN Nos of the appellants etc.

- (2) The Appellant company is directed to file all pending statutory document(s) including Annual Accounts and Annual returns for all the defaulting financial years upto 2016-17 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.50,000/- (Rupees fifty thousand 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 Appeal No.670/KB/2017".
- (5) The appellant 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, Patna, Bihar 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 leads 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 appellant company prior or during the striking off of the company.

The Appeal No.670/KB/2017 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 10th September, 2018.