

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

Hon'ble Mr. Jinan K.R., Member (Judicial)

C.P. (Appeal) NO.489/KB/2017

In the matter of

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

And

In the matter of:

Baidyanath Chemical & Carbonisation Private Ltd. (Company Name
Struck Off by Registrar of Companies)

And

In the matter of:

Yogendra Prasad Singh, working for the gain at Shantipuri
Daltonganj, 822101, Jharkhand within the aforesaid jurisdiction.

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And

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Appellant

In the matter of:

REGISTRAR OF COMPANIES, JHARKHAND, having its office at 4th Floor
Mangal Tower, Kanta Toli, Ranchi, 834001, Jharkhand within the aforesaid
jurisdiction.

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Respondent

Counsel on Record:

CS Sanjeev Kumar Dikshit

} For the appellant

Date of Pronouncement of Order 30th August 2018

Sd

ORDER

1. This is an appeal filed by Shri Yogendra Prasad Singh, one of the shareholders of Baidyan Nath Chemical & Carbonisation Private Limited under Section 252(3) of the Companies Act, 2013 seeking restoration of the name of the Company, namely, Baidyanath Chemical & Carbonisation Private Limited in the Register of Companies maintained by the Registrar of Companies, Jharkhand.

2. The appellant's averment in brief for the consideration of the appeal is the following:

(a) The applicant company was incorporated on 23/12/1987. The share capital at the time of incorporation was divided into 2500 equity shares of Rs. 100/- each which was subsequently increased to 23,000 equity shares of Rs.100/- each and which is the present share capital of the company.

(b) The appellant company is in the business of manufacturers, buyers, sellers, dealers of smokeless cooking coat-tar. A copy of the Certificate of Incorporate along with the Memorandum and Articles of Association are annexed with the appeal and marked as **Annexure A-2**. The latest filed Annual

Return, notifying inter alia directorship and shareholding with the ROC is annexed herewith and marked as **Annexure A-3**.

(c) The appellant states and affirms that since the incorporation of the Company and up to the date of filing this appeal, the appellant has been carrying on its business and operations without any material break. The Bank statements of the financial years 2013-14, 2014-15 and 2016-17 are annexed herewith as **Annexure A-4** to reveal that the appellant is carrying on and pursuing its commercial objective as a going concern.

(d) It is admittedly on record that the appellant has filed the financial statement and annual return in prescribed form upto the financial year 2013 and annual return only for the financial year 2013-14, however, defaulted in filing annual return from the financial year 2014-15 and financial statement in prescribed form from the financial year 2013-14. The non-filing of the aforesaid returns leading to default u/s. 92 of the Companies Act, 2013 has been caused inadvertently and without any malafide intention. The appellant, however, admits the aforesaid default and is committed to regularize all pending filings of returns

3. ROC, Jharkhand filed report contending, in brief, is the following:

- The appellant company failed to submit financial statement and returns from the financial year ending 31.03.2015 onwards. The ROC had reasonable belief that the company was not in operation

and thereby after issuing show cause notice to the company as well as to directors on 20.03.2016 and after issuing public notice in Form STK-5 on 18.04.2017 removed the name from the register as per section 248 of companies Act 2013. The ROC was not in receipt of any reply from the Company or from the Directors thereby issued Form STK - 7 Publication in official gazette. Upon the said contentions, the ROC Jharkhand prays for passing appropriate orders as may deem fit and proper in the case of this nature.

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

5. One among the shareholders of Baidyanath Chemical & Carbonisation filed this appeal under Section 252 (3) of the Companies Act 2013 for the restoration of the Company's name in the Register of the ROC, Jharkhand. It is contended that the Company has been incorporated in the year 1980 and has been carrying on its business since its inception and failed in submitting annual returns, balance sheets for the financial year(s) ended 2014-15 onward and thereby the Registrar of Companies, Jharkhand had *suo motu* struck off the name of the company and, hence, the present appeal.

6. According to the Ld. Counsel for the appellant, though the company is carrying on its business activities since its incorporation till today, it failed in filing the annual returns due to inadvertent mistake and also due to defaults in statutory compliance though 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.

7. To substantiate the said contentions the appellant produced annual returns, financial statements, directors' reports, copies of the income tax returns, and bank statements etc.

8. It is good to have a look at the financial statements for the years 2013-14, 2014-15 and 2015-16 annexed to the petition and marked as "**Annexure A-5**". Following are the data available from the balance sheets and profit & loss accounts for the above said years.

Sl. No.	For the financial year	Assets (Rupees)	Liabilities (Rupees)	Revenue Earned (Rupees)	Profit/(Loss) (Rupees)
1.	2013-14	6,472,217.58	6,472,217.58	13,338,435.50	135,976.10
2.	2014-15	6,477,702.88	6,477,702.88	15,875,247.80	121,454.66
3.	2015-16	8,829,074.67	8,829,074.67	16,808,052.61	131,752.33
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8. The revenue from the operation and the profit as shown above clearly indicates that the Company is doing some business and it is in operation. So also, a screening of the copies of Income Tax Return Acknowledgments for the Assessment Years of last three years marked as **Annexure- A-6** indicates that the appellant is paying tax regularly and income is generating from doing business. So also, from the statement of accounts produced shows that it is a going concern. The copies of the statement of accounts are annexed as **Annexure-A-4**.

9. At this point, it is important to note that in ***Purushottamdass and Another V. Registrar of Companies*** [(1986) 60 Comp. Case 154 Bom], the Hon'ble High Court of Bombay in an appeal filed under Section 560 of the old Act, has held that:

"The objects of Section 560(6) of the Companies Act is to give a chance to the company, its members and creditors to revive the company which has been struck off by the Registrar of Companies, within a period of 20 years, and to give them an opportunity of carrying on the business only after the company judge is satisfied that such restoration is necessary for the interests of justice. The company judge may be satisfied that either the company was carrying on its business or was in operation or otherwise, and it is, in the circumstances of the case, equitable and just to restore the company. It, however, does not mean that the rights and liabilities of the company are lost during the interim period, inasmuch as Section 560(6) of the Companies Act provides that after an order of restoration is passed, it shall be deemed as if the company was never struck off from the register of companies. The section also provides the company judge with wide powers to put certain conditions or directions at the time of ordering the restoration".

10. The above discussions lead to the conclusion that the company is in operation. Born in mind the proposition as held in the above cited decision the appeal is liable to be allowed. However, being found that the reason advanced on the side of the appellant for non filing of statutory returns and financial statements for a period more than two years not reasonable or believable it is just and fare to allow the appeal upon payment of cost of Rs.50,000/- (Rupees Fifty thousand only).

11. In the result in exercising the powers conferred on the Tribunal under Section 252 of the Company's Act, 2013 this appeal is allowed upon the following directions:

- (1) 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.
- (2) The Appellant company is directed to file all pending statutory document(s) including Annual Accounts and Annual returns for the financial years 2013-14, 2014-15, 2015-2016 and **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 application, is directed to personally ensure compliance of this order.

- (4) The restoration of the Company's name is also subject to the payment of the 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 the revival of the company pursuant to orders of Hon'ble NCLT in CP (Appeal) No.489/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 the above directions, the Registrar of Companies, Jharkhand 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 applicant company prior or during the striking off of the company.

Hence C.P.(Appeal) No. 489/KB/2018 is disposed of as above.

Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

Sd
8/30/18

**(Jinan K.R.)
Member (Judicial)**

Signed on this, the 30th day of August 2018.

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