

**NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
AHMEDABAD**

**Co. Appeal No. 35/252/NCLT/AHM/2018**

Coram: **Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER JUDICIAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD  
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 27.09.2018**

Name of the Company: Ketankumar Patel  
(Symwell Pharmaceuticals Pvt Ltd.)  
V/s.  
Registrar of Companies, Gujarat.

Section of the Companies Act: Section 252 (3) of the Companies Act, 2013

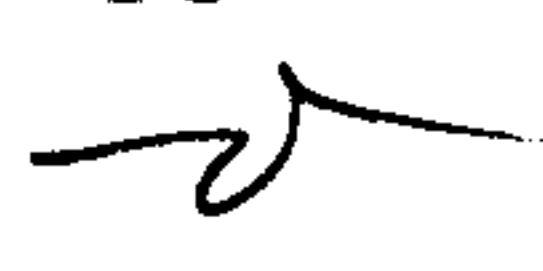
<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
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1.

2.

**ORDER**

None present for the Appellant

The case is fixed for pronouncement of order. The Order is pronounced in the open court, vide separate sheet. The Co. Appeal No. 35/2018 is conditionally allowed and stands finally disposed of ~~accordingly~~. 

  
**HARIHAR PRAKASH CHATURVEDI  
(MEMBER JUDICIAL)**

Dated this the 27<sup>th</sup> day of September, 2018

**BEFORE NATIONAL COMPANY LAW TRIBUNAL  
GWALIOR BENCH**

**Co. Appeal No. 35/252(3)/NCLT/AHM/2018**

**In the matter of:**

**M/s. SYM WELL PHARMACEUTICAL PVT. LTD.**

**In the matter between:**

Mr. Ketankumar Patel  
(DIN :03549929)  
B-80, Abhinandan Swami Society,  
B/h. Tirthnagar No.1,  
Gurukul Road, Mamnagar,  
Ahmedabad-380013.

..... Appellant

**Versus**

Registrar of Companies,  
ROC Bhavan,  
Opp. Rupal Park Society,  
B/h. Ankur Bus Stop,  
Naranpura, Ahmedabad-380013

..... Respondent

**Order delivered on 27<sup>th</sup> September, 2018.**

**Coram: Hon'ble Mr. Harihar Prakash Chaturvedi Member (Judicial)**

**Appearance:**

Advocate Mr. Prashant Patel appeared for the Appellant.

1. By the present appeal the Appellant being Director/shareholder of the Company namely, M/s. Symwell Pharmaceutical Pvt. Ltd., has sought for restoration of its name in the Register of the ROC. The Registrar of Companies, Gujarat ["ROC" for short] which stood struck off vide its order dated 21.06.2017 which is impugned in the present appeal praying for grant of following reliefs: -



- (a) *The Order of ROC, removing the name of the Company from the Register of Companies, maintained by the ROC, to be set aside.*
- (b) *The name of the Company be restored, in the Register of Companies, maintained by ROC, Gujarat in the interest of justice.*
- (c) *The ROC be directed to make the Company alive and to accept Company's returns for the F.Y. 2016-2017 without additional fees, penalties and without any punitive actions, as if the name of the company has never been removed from the Register of Companies.*

2. The facts in brief, of the present Company Appeal are narrated as under;

- i. It is submitted that the ROC vide its Public Notice No. ROC/AHMD/248(5)/STK-7/PUB-1 dated 21.06.2017 (issued in Form No. STK-7) and followed a by final notice dated 25<sup>th</sup> April, 2017 (issued under Section 248(5) of the Companies Act, 2013) has struck off the name of the Company from the Register of Companies with effect from 21.06.2017, because as the Company failed to file its statutory returns since incorporation.
- ii. It is stated that the Company was originally incorporated on 29<sup>th</sup> June, 2011 with such object to carry on business of imports, exports, traders, buyers, sellers, retailers, wholesalers, suppliers, indenters, packers, movers, preservers, stockiest, agents, sub-



agents, merchants, distributors, consigners, consultants, liasioners, jobbers, brokers, concessionaries or otherwise deal in all kinds, specification, strength of pharmaceuticals in all its branches, tonics, vitamins, bulk drugs, vaccines, medical gases, diagnostic agents, surgical & non-surgical articles, API Drugs intermediates, medical, chemicals, preparations and compound drugs and formulations, solvents, catalyst and Ayurveda, homeopathic, herbal, unani, siddha, biochemical health care products etc..

3. The Appellant also filed an additional affidavit stating that it is not a shell company and nor any unusual transaction were during the period of demonetisation.
4. In the present appeal the ROC, Gujarat has filed its representation dated 06.03.2018 by denying the allegation of the appellant made in the present appeal and justified its impugned action contending that the name of the Company was been struck off due to failure on the part of the company to file its statutory returns since incorporation.
5. Notwithstanding, the above the ROC has also submitted that this court may pass an appropriate order for restoration of the name of the Company on merits of the present appeal subject to filing of balance sheet and returns due for the financial years which are not filed by the Company.



6. In the present matter the Income Tax Department did not file its representation, despite proper notice.
  
7. The present appeal is filed (under Section 252(3) of the Companies Act) by the Appellant being a Director/Shareholder of the Company. Hence, he is entitled for the same seeking for restoration of the Company's name. Therefore, the present Appeal is maintainable. As, the name of the Company, M/s. Symwell Pharmaceuticals Pvt. Ltd., was struck off on 21.06.2017 from the Register of ROC and the same was got published in the Gazette of India, While the present Appeal is filed on 19<sup>th</sup> June, 2018, before this Tribunal. Hence the present appeal is found be well within limitation.
  
8. The Appellant filed an amendment application in main Co. Appeal after the filing of the representation of the ROC pursuant to order passed by this bench on 05.06.2018 in IA No. 185/2018 and the same amendment was allowed. The Appellant in the amendment application has submitted that the Appellant Company shall make all its statutory compliances by filing, i.e. Financial Statement, Annual returns for the period of 2011-2012 to 2016-2017 along with following fees and additional fees. The Appellant has also stated that Company was executing export order and was having requisite licence for the same in form of IEC code and Drug licence and annexed copy thereof.

It appears that the Company was active in its business and availed requisite trade licence and also filed Income Tax returns for two years, which are annexed to the present appeal. Therefore, the Company has prayed for restoration of its name in the Register of companies as maintained by the ROC, Gujarat, Ahmedabad, otherwise its shareholders will suffer irreparable loss and hardship and it will be highly prejudice to their interest.

Hence, the appeal is filed with bonafide intention in the interest of justice. The Appellant has also submitted proof of payment of cost of Rs. 15,000/- in Prime Minister National Relief Fund vide its letter dated 11.07.2018, the same is taken on record.

9. As per the material available on record shows that the Company M/s. Symwell Pharmaceuticals Pvt. Ltd. having its Registered Office at B-80, Abhinandan Swami Society, B/h. Tirthnagar No. 1, Gurukul Road, Mamnagar, Ahmedabad- 380052, it seems to be going concern.
10. Having heard Learned Advocate for the Appellant and by going through the contents of the appeal and by considering the facts of the present case, we are of the view that it would be just and equitable to restore the name of the Company M/s. Symwell Pharmaceuticals Pvt. Ltd. in the Register of the Registrar of Companies (as maintained by the ROC, Gujarat) and to remove the defects of disqualification, if




any, as Director/Shareholder, imposed under Section 164(2) of the Companies Act, 2013.

11. Therefore, for the aforesaid reason the present appeal succeeds and is allowed in terms of its prayer clause. Consequently, the ROC, Gujarat is hereby directed to restore the name of the Company in its Register of Companies, but subject to compliance of following conditions to be complied by the appellant.

- (a) *The Petitioner will file all the overdue statutory returns viz. Financial Statements and Annual Returns for the years which have not been filed and also other event based documents if any, with fees and additional fees as required under the Companies Act, 2013.*
- (b) *The publication of notice in two leading newspapers circulating in the district official Gazette of Government of India, in regard to the restoration of the name of the Company on the register maintained in the office of the respondent as per the draft approved by the respondent, at the cost of the petitioner.*
- (c) *The petitioner will ensure that the Company will not make any default in filing of statutory returns in future as required under the Companies Act, 2013.*
- (d) *The Appellant shall also pay cost for an amount of Rs. 25,000/- (Rupees Twenty five thousand only) payable to the Central Government, Ministry of Corporate Affairs through Office of the ROC, Gwalior 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 the receipt of the order and shall file compliance.*

12. With the aforesaid conditions the present appeal is allowed and accordingly stands disposed of.

  
**Mr. HARIHAR PRAKASH CHATURVEDI**  
**(MEMBER JUDICIAL)**

vhs/