BEFORE THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH

CP 1672/252/NCLT/MB/MAH/2018

CORAM:

M. K. Shrawat, Member (Judicial)

In the matter of Section 252 of the Companies Act, 2013

In the matter of **M/s. Diligence (India) Corporation Private Limited**

For the Applicants:
Advocate Anuj Rajendra Modi

CORRIGENDUM ORDER

1. A mention has been made before this Bench, by the Representative for the M/s. Diligence (India) Corporation Private Limited (Applicant Company), seeking permission of this Bench for the correction in the name of counsel for the petitioner and in the Para 15 of the order dated 14.08.2018.
2. Allowed. Henceforth, the name of the counsel appearing for the petitioner is Advcate Anuj Rajendra Modi instead of Neena Deshpande & Co.
3. Also, Para 15 of the said order shall be read as follows:
   "Accordingly, this Petition/Application is allowed. The restoration of the Petitioner Company's name to the Register of Companies maintained by the RoC, is hereby ordered, with a direction that the Company shall comply with the Provisions of the Act. And further it will be subject to payment of costs of ₹30,000/- to be paid by way of Demand Draft in favour of "Pay and Accounts Officer, Ministry of Corporate Affairs, Mumbai", within 7 days from the receipt of the duly certified copy of this Order, to this office. Consequentially thereupon the Bank Account/s if freezed shall get defreezed and to be operated by the Petitioner Company".
4. Rest of the order remains unaltered.
5. Ordered Accordingly.

SD/-

Dated : 14.08.2018

M. K. SHRAWAT
MEMBER (JUDICIAL)

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

CP No.: 1672/252/NCLT/MB/MAH/2018

Under section 252 of the Companies Act, 2013

In the matter of

Diligence (India) Corporation Private Limited,
Shop No. 4 & 5, S-5 adanand Apartment, Nera
Dr. Homi Baba Chowk, gokhale Nagar Road,
shivaji Nagar, Pune-411038

Through its Director

Manorama Dilip Khedekar

....Petitioner

v.

Registrar of Companies, Pune

..... Respondent

Date of Hearing: 10.08.2018
Order delivered on: 14.08.2018

Coram :
Hon'ble M. K. Shrawat, Member (J)

For the Petitioner :
Neena Deshpande & Co.

For the Respondent :
Mr. Neelambuj – Advocate for the RoC.

Per : M. K. Shrawat, Member (J)

ORDER

1. This present petition/application has been filed under Section 252 of the Companies Act, 2013 (hereinafter as **Act**) by the Director as well as Shareholder of "Diligence (India) Corporation Private Limited" (hereinafter as **Company**) praying for restoration of Company's name in the Register maintained by the Registrar of Companies, Pune (hereinafter as **RoC**).
2. The Company was incorporated with the RoC, Pune on 06.12.2012 having CIN : U29200PN2012PTC145618.
3. The name of the Petitioner Company was struck off from the Register on account of the reasons that the Company is not carrying on any business and that there was no business operation for a period of last two financial years and have not made any application within such period for obtaining the status of Dormant Company under S.

455 of the Act. Consequentially, the RoC has published a public notice for Striking off and Dissolution of Company i.e. STK – 7 dated 22.07.2017.

Submissions from the Petitioners:

4. The Learned Representative for the Petitioner submits that the Company is a running concern and is in operations since incorporation. Further, the Company has not made any application for obtaining the status of Dormant Company under S. 455 of the Act. Further that, the Petitioner Company had never in the past, on its own, moved any application for Strike-off under S. 248 (2) of the Companies Act, 2013.
5. It is further submitted that the Company could not file the financial statements with the RoC due to inadvertence. Failure to file the annual returns and financial statements was unintentional and not deliberate.
6. The Learned Representative further submitted that, the Petitioner Company now has all the remaining documents ready and prepared and is willing to file the same before the RoC, if so permitted. Further the Petitioner Company is willing to file any other necessary document which are required by the RoC.

Submissions from the Respondent/RoC:

7. The RoC has forwarded its report stating therein that the RoC has issued the notice in Form STK – 1 to the Petitioner Company on the ground that, the Company is not carrying on any business and that there was no business operation for a period of last two financial years and have not made any application within such period for obtaining the status of Dormant Company under S. 455 of the Act. But there is no communication from the side of the Petitioner Company. Hence, consequentially the RoC has issued public notice i.e. STK – 7 dated 22.07.2017 intimating that the name of Company is been struck-off from the Register of RoC.
8. It is also submitted that, the Petitioner Company has not filed the Annual Returns and Balance Sheets with the RoC for the F. Y. 2014-2015 and 2015-2016. And as the Statutory Returns were not filed for the said period, the RoC came to conclusion that, the Petitioner Company has ceased to its business. And consequentially the name has been struck-off from the Register of RoC.
9. However, it is further submitted in the said report that the RoC has no objection to restore the name of the Petitioner Company, if the Petitioner Company is willing to comply with the provisions of the Act, subject to imposition of Cost.

Findings:

10. That, the facts and circumstances of the case have enlightened that the relevant documents which are to be filed, are ready with the Company and the Company is willing to file the same, if so permitted. Further that, the accounts of the Company were

audited and the audited accounts have been approved for the years 2012-13 to 2016-17, annexed in the petition..

11. Although the financial statements reveal that the Company is not generating any revenue since last two years, therefore it can be said to be a non-running concern, the ground for strike-off i.e. "no business operations for a period of last two financial years" by ROC appears to be correct. But under the circumstances mentioned below, this Company deserves to be revived:

    The Additional documents filed by the Petitioner stating the Master Data and the financials of the Company in which the two Directors of the Petitioner Company are holding the directorship clearly reveals that one "DILIGENCE INFRAPROJECTS PRIVATE LIMITED" Company is under operations and is having long term liabilities worth ₹4,75,000/- and also it is under expectation of future business. The disqualification of directors due to strike off of this company will adversely affect the other company. The above stated fact clearly reveals that the said Company having common director is a going concern. Hence, the strike off of this Company may prejudice other company.

12. Further, it is noticed that, this Petition is also filed to avail the benefit of the CODS, 2018 which is floated by the Government. This Bench has passed the order of Restoration in this similar situation in *CP No. 66/252/NCLT/MB/MAH/2018 namely "M/s. Health and Wellness Aadhar Private Limited"* which is worth to reproduce as under :

    > *"16. We have gone through the said CODS Scheme and the provisions of Law by which the Directors are disqualified. And we came to know that, the Directors are disqualified due to operation of Law and not by the order of any Authority. Hence, we are of the view that, since the Directors are disqualified through an operation of Law, then, they can be qualified in the eyes of Law whenever they comply with the provisions of the Act and the CODS Scheme, 2018. This order will only Restore the name of Petitioner Company in the Register of RoC. For removal of the Disqualification of the Directors they have to follow the procedure laid down by the CODS, 2018."*

13. That, the Company has not deposited heavy cash in its Bank Account during the period of Demonetisation i.e. from 8th November, 2016 to 31st December, 2016, as noticed from the annexed Affidavit along with this Petition/Application.

14. Hence, upon considering the facts and circumstances of this present petition/application, this Bench is of the view that, it would be just and proper to order

restoration of the name of the Petitioner Company in the Register of Companies maintained by the RoC.

15. Accordingly, this Petition/Application is allowed. The restoration of the Petitioner Company's name to the Register of Companies maintained by the RoC Mumbai, is hereby ordered, with a direction that the Company shall comply with the Provisions of the Act. And further it will be subject to payment of costs of ₹ 30,000/- to be paid by way of Demand Draft in favour of "Pay and Accounts Officer, Ministry of Corporate Affairs, Mumbai", within 7 days from the receipt of the duly certified copy of this Order, to this office. Consequentially thereupon the Bank Account/s if freezed shall get defreezed and to be operated by the Petitioner Company.

16. This Petition bearing No. 1672/252/NCLT/MB/2018 is, therefore, disposed of on the terms directed above. The Learned RoC shall give effect of this Order only after perusal of the Compliance report of cost imposed. The Company is directed to file all the required documents and shall fulfil other relevant statutory compliances within 30 days from Restoration of its name in the Register of Companies maintained by RoC.

17. Ordered accordingly. To be consigned to Records.

SD/-

Dated : 14.08.2018

M. K. SHRAWAT
MEMBER (JUDICIAL)

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