

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

CP No.: 2040/252/NCLT/MB/MAH/2018

Under section 252 of the Companies Act, 2013

In the matter of,

Markup Builders and Developers Limited, 128,
Narayan Dhuru Street., Mumbai City, Mumbai
– 400 003.

Through its Director:-

Mr. Manharlal Shantilal Mehta

....Petitioner

v.

Registrar of Companies, Mumbai

..... Respondent

Order delivered on: 05.09.2018

Pronounced on :06.09.2018.

Coram :

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

For the Petitioner:

Prashant Bare, Advocate.

For the Respondent :

None Present.

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

ORDER

1. This present petition/application dated 21.05.2018 has been filed under Section 252 of the Companies Act, 2013 (hereinafter as **Act**) by "Markup Builders and Developers Limited" (hereinafter as **Company**) praying for restoration of Company's name in the Register maintained by the Registrar of Companies, Mumbai (hereinafter as **RoC**).
2. The Company was incorporated with the RoC, Mumbai on 21.02.2005 having CIN :U45200MH2005PLC151454.
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 19.07.2017.

Submissions from the Petitioners:

4. The Learned Representative for the Petitioner submits that, the Company is a running concern in the business of construction. The Company has assets as well as corresponding liabilities including the statutory dues. 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 accepts that, inadvertently as well as due to lack of Professional Expertise the Company could not file the required documents with the RoC.
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 19.07.2017 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 from F. Y. 2012 till date. 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 within prescribed time. Further that, it is not a case that the Company is not actively engage in the business or stopped business activities; as apprehended by the Learned RoC. The ground for strike-off i.e. "no business operations for a period of last two financial years" is not correct. Admitted position is that the Company is in the business of construction.
11. Moreover, by going through the documents of this Petition/Application it is noticed that, the Company is having Revenue from Operations amounting to ₹27,44,689/- as per the Profit and Loss Account for year ended 31.03.2017. This fact is thus established that the Company is a running concern.
12. 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, instead of regular trade deposits, as noticed from the annexed Affidavit along with this Petition/Application.
13. 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.
14. 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/- (₹Thirty Thousand Only)** 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.

15. This Petition bearing No. 2040/252/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.

16. Ordered accordingly. To be consigned to Records.

Dated :06.09.2018

Harshada

SD/-

**M. K. SHRAWAT
MEMBER (JUDICIAL)**