

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

CP No.: 672/252/NCLT/MB/MAH/2018

Under section 252 of the Companies Act, 2013

In the matter of

M/s. Progen Engineering & Construction Private
Limited, Office No.1, Ground Floor, Parimal,
17th Road, Khar (W) Mumbai, Maharashtra
400052.

....Petitioner/Applicant Company

v.

Registrar of Companies, Mumbai

..... Respondent

Order delivered on: 27.04.2018

Coram :

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

For the Petitioner :

Ms. Dipika Biyani, Practicing Company Secretary – Authorised Representative for the
Petitioner/Applicant Company.

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 “M/s. Progen Engineering & Construction Private Limited” (hereinafter as **Petitioner Company**) praying for restoring its name in the Register maintained by the Registrar of Companies, Mumbai (hereinafter as **RoC**).
2. The Petitioner Company was incorporated with the RoC, Mumbai on 01.10.2011 having CIN : U45400MH2011PTC222640.
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. Hence, the RoC has published a public notice for Striking off and Dissolution of Company i.e. STK – 7 dated 28.07.2017.

Submissions from the Petitioners:

4. The Learned Representative for the Petitioner Company submitted that, the Petitioner Company is not having a great business at this stage and hence there no revenue from operations in the Company as on date. This is because the tough time and financial crunches in the industry.
5. It is further stated that, this Petition/Application is filed because the Directors of the Petitioner Company are having a Directorship in another Company namely, Heben Chartered Resources Private Limited which has not been struck-off by the RoC. And as the said Directors are got Disqualified by operation of Law this Active Company is getting affected in its daily business.
6. It is further stated that, if the name of the Petitioner Company is restored then the Directors can get the benefit of the CODS, 2018.
7. Hence, it is prayed that, the action of Strike-off is having great prejudice to the Petitioner Company and also to the Directors and therefore the name of the Petitioner Company may be restored in the Register maintained by the RoC.

Submissions from the Respondent/RoC:

8. The RoC has forwarded its report dated 28.03.2018 inter alia stating therein that, the RoC has issued the notice in Form STK – 1 on 22.03.2017 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 reply to the said notice from the side of the Petitioner Company. And 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.
9. It is also submitted that, the Petitioner Company has not filed the Annual Returns and Balance Sheets with the RoC from F. Y. 2012-13 to 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.

10. 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:

11. I have gone through the Pleadings on record and also through the submissions made by the Learned Representative for the Petitioner Company. While going through it came to my notice that, as on date the Petitioner Company is not having the revenue generation.
12. But this Petition/Application has been moved to avail the benefit of CODS, 2018 which envisages the Condonation of Delay in the filing by the Directors.
13. Further that, due to Disqualification of the Directors the another Company which has not been Struck-off is also getting affected. Hence, in my conscientious view the Petitioner Company deserves Restoration of its name in the Register maintained by the RoC.
14. Further, during the hearing it was noticed that this Petition/Application is filed to avail the benefit of the CODS, 2018 which envisages for the Condonation of Delay in Annual Filings. Hence, one more reason for due consideration of the allowance of this Petition/Application is that almost under identical circumstances in the CP No. 66/252/NCLT/MB/MAH/2018 namely "M/s. Health and Wellness Aadhar Private Limited" this Bench has ordered the Restoration of name in the Register of RoC 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."
15. 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.

16. 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 ₹ 60,000/- 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.
17. This Petition bearing No. 672/252/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.
18. Ordered accordingly. To be consigned to Records.

Dated : 27.04.2018

SD/-
M. K. SHRAWAT
MEMBER (JUDICIAL)

Avinash