

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

Co. Appeal No. 339/252(3)/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 28.09.2018**

Name of the Company: Solly Perumal
(Sachana Ship Recycling Pvt Ltd).
V/s.
Registrar of Companies, Gujarat.

Section of the Companies Act: Section 252 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 is conditionally allowed and stands finally disposed of accordingly.


HARIHAR PRAKASH CHATURVEDI
(MEMBER JUDICIAL)

Dated this the 28th day of September, 2018

**BEFORE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH**

Co. Appeal No. 339/252(3)/NCLT/AHM/2018

In the matter of:

M/s. Sachana Ship Recycling Pvt. Ltd.

In the matter between:

Solly Perumal,
Sachana Ship Recycling Pvt. Ltd.
Having its registered office at:
Plot No. 8, Sachana Ship Breaking Yard,
Sachana – 361 230, Dist. Jamnagar,
Gujarat.

.....Appellant

Versus

The Registrar of Companies,
Registrar of Companies,
ROC Bhavan
Opp. Rupal Park
Nr. Ankur Bus Stand
Naranpura
Ahmedabad 380 013

.....Respondent

Order delivered on 28th September, 2018.

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

Appearance:

Mr. Balvantsinh J. Vaghela, PCS, for the Appellant.
None for the Respondents.



ORDER

1. By this Appeal, the Company, namely, M/s. Sachana Ship Recycling Pvt. Ltd., seeks for restoration of its name in the Register of the ROC. The Registrar of Companies, Gwalior ["ROC" for short] by its impugned order dated 14.06.2017 has struck off the name of the company. Being aggrieved with such action the appellant being Member/Director of the company has prayed for the following relief:

(i) To restore the name of the company M/s. Sachana Ship Recycling Pvt. Ltd. to the Registrar of Companies, Gujarat in the interest of the company, its shareholders and other stakeholders directly and indirectly associates of the company.

(ii) To pass other incidental consequential and supplementary orders and directions as may be necessary and deemed fit by this Tribunal.

2. The facts of the present case as narrated in the present appeal, are described as under: -

M/s. Sachana Ship Recycling Pvt. Ltd. was originally incorporated on 04.04.2011 as a Company Limited by shares with the Registrar of Companies, Gujarat,

Ahmedabad under the Company Act, 1956. It is contended that the Registrar of the Companies vide its Notice No. ROC/AHMD/248(5)/STK-7/PUB/1 dated 21.06.2017 (issued in Form No. STK-7) followed by a final notice issued under sub-section (5) of Section 248 of the Companies Act, 2013, has struck off the name of the Company from its register with effect from 21.06.2017, stating such reason that the Company has failed to file its Financial Statements and Statutory Annual Returns for the period starting from Financial Years 2011-12 to 2015-16 nor it applied to the ROC within such period for obtaining a status of dormant company under the provisions of the Companies Act.

3. The Appellant in the present appeal has further submitted that the order of such removal as passed by the Registrar of Companies, Gujarat is not received by him or by the Company or by its any other Director. The applicant also submits that he was informed by the statutory Auditor of the Company, thereafter, he confirmed about striking off of the name of the company from the register of the ROC.



4. On Notice being issued, the ROC, Gujarat, has filed his Representation affidavit dated 27.06.2018 by denying the allegations made in the appeal and contentions of the appellant. He justified his action by contending that the Company unintentionally failed to file its annual returns viz. balance sheets and other returns with the Registrar of Companies from Financial Years 2011-12 to 2016-17 which are mandatory requirement of Section 159 and 220 of the Companies Act, 1956 and also under Section 92 and 137 of the Companies Act, 2013 and because of such lapses, the Company's name stood struck off. Therefore, the registrar of Companies has initiated actions under Section 248(1) of the Companies Act, 2013.

5. Notwithstanding the above, the ROC has further submitted in his affidavit that the present Appeal be considered by this court and as per its merits the name of the Company may be restored subject to assurance of making of all statutory compliance by the Company

and making further payment of cost to the Central Government.

6. The appellant has also admitted this fact that he could not reply back the Respondent in time, since he was out of station as well as there was no staff available in his company.

7. *The appellant preferred the present appeal under Section 252(3) of the Companies Act, as being a Member/Director of the deregistered company. Hence, he is eligible for filing the present appeal seeking for restoration of the Company's name in the register of the ROC. Hence, the present Appeal is found maintainable. Since the name of the Company M/s. Sachana Ship Recycling Pvt. Ltd. was struck off on 21.06.2017 from the Register of Companies followed by a Gazette notification, while the present appeal is filed on 27.06.2018. Hence, it is found to be filed well within limitation.*



8. As per the material available on record, the main cause for striking off the name of the Company, M/s. Sachana Ship Recycling Pvt. Ltd. appears that the company has failed to file its statutory returns e.g. Balance Sheets, Annual Returns before the ROC nor it made its representations before the Registrar of Companies, due to unawareness of legal procedure.
9. A perusal of the contents of the present appeal and documents annexed reflects that the Company seems to be a going concern and was doing its business. The Registered Office of the Company is situated at Plot No. 8, Sachana Ship Breaking Yard, Sachana, Dist. Jamnagar – 361 230, Gujarat.
10. The appellant has submitted that the company was incorporated -
- “to carry on and business of ship builders and ship repairers and to carry on business of breaking, cutting, dismantling of ship, steamers, trawlers, steam launches, ocean going vessels and vessels plying on water and to purchase, sell, dispose off, import, export and deal in steel, steel scrap, spares, equipment, metals strips, sheet*

plates, wires, rods, woods, petroleum products, electrical goods and machineries utensils, appliances, furniture and other materials resulting from ship breaking operations and from trading activities and to act as commission agents and scrap dealers in relation thereto."

11. Further, the Appellant has claimed that the company has got audited its financial statements regularly as required under the provisions of Companies Act, 2013 and annexed a copy of the Income Tax Returns for the financial year 2018-19. A copy of Balance Sheet and Profit and Loss Statement duly audited by a Chartered Accountant of the Company is also annexed along with the application.

12. In the present matter, the representation of the Income Tax Department is received which states that the assessee company has been allotted a PAN Number on 17.05.2018. The date of incorporation of the company is 04.04.2011 and the assessee company filed its Annual Returns for the Financial Year 2018-19 for the first time by declaring its total income as NIL. The

Income Tax Department has expressed no further comments in respect of restoration of the name of the company and to be decided by this Tribunal as per merit.

13. By considering all the aforesaid aspects, we are of the considered view that it would be just and equitable to restore the name of the Company M/s. Sachana Ship Recycling Pvt. Ltd. in the Register of Companies as being maintained by the ROC, Gujarat, and so as to remove the defects of disqualification, if any, of its Directors, imposed under Section 164(2) of the Companies Act, 2013.


14. Therefore, the present appeal is conditionally allowed in terms of its relief clause. Consequently, the Registrar of Companies, Gujarat is hereby directed to restore the name of the Company in its register of Companies but on compliance of following conditions by the appellant: -



- (i) The Appellant shall file all over due statutory returns with fee and additional fee as required under the Companies Act; and other laws within stipulated period stated therein, or within 90 days from the receipt of an authentic copy of this order and after restoration of its name in the Register of ROC, Gujarat.
- (ii) The Appellant shall publish a Notice in leading newspapers circulating in the District as well as in the Official Gazette of the Government of India with regard to the restoration of the name of the Company in the Register of Companies maintained by the Office of the Registrar of Companies, as per the draft notice approved by the Registrar of Companies at the expenses of the Appellant;
- (iii) The Appellant shall also pay cost for an amount of Rs. 25,000/- payable to the Central Government, Ministry of Corporate Affairs through the office of the ROC, Gujarat, 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 receipt of an authentic copy of this order and to file compliance thereof.

15. Thus, the present appeal is allowed and accordingly stands disposed of.


(Harihar Prakash Chaturvedi),
Member Judicial

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