

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

CP No.339/2017

Under section 252(3) of CA 2013

In the matter of

Narendra Popatlal Barhate,
"Pachasheel", 42/16, Erandavane,
Income Tax Office lane , Off Karve Road
Pune – 411 004.

...Petitioner

The Registrar of Companies,
3rd Floor, PMT building,
Deccan Gymkhana , Pune – 411004

....Respondent.

Order delivered on 06.10.2017

Coram:

Hon'ble Mr. B.S.V. Prakash Kumar, Member (Judicial)

Hon'ble Mr. V. Nallasenapathy, Member (Technical)

For the Petitioner: Mr. Mahesh Athavale, Practicing Company Secretary.

Per: V. Nallasenapathy, Member (Technical)

ORDER

1. This company petition is filed by a shareholder of M/s. Seed Management Services Pvt. Ltd seeking relief against the respondent to restore the name of the company in the register of companies from the date of strike off of the company by the Registrar of Companies, Pune and treat the company as if it had never been struck off so as to enable the company to complete the pending filing as

required under the provisions of the Companies Act, 2013 and to enable the company to continue to function as an operating company, the company be given two months' time to file financial statement and Annual Return as on 31.03.2016 and the company be allowed to carry on its business operations.

2. The Petitioner states that M/s. Seed Management Services Pvt. Ltd is a company registered under Companies Act, 1956 with the Registrar of Companies, Pune and having registered Office "Pachasheel", 42/16, Erandavane, Income Tax Office lane, Off Karve Road Pune - 411 004. CIN U74140PN2005PTC020339. The said company is engaged in the business of rendering various consultancy, advisory, counselling, training and management services in the fields of information technology, business process outsourcing etc... The Company's Authorized Share capital is ₹ 5,00,000/- and the paid up share capital is ₹1,01,000/-.

3. The Applicant states that the Respondent issued a notice pursuant to Section 248 (1) and (2) of the Companies Act, 2013, to the company in form STK-1 having reference No. ROCP/STK-1/2017/24736A dated 11.03.2017 which states that the company is not carrying on any business or operation for a period of two immediately preceding financial years and has not made any application within such period for obtaining the status of the company under Section 455, therefore, the respondent intended to remove the name of the company from the register of Companies and requested the company to send representation along with copies of relevant documents within 30 days from the receipt of the notice. The notice further provided that unless a cause contrary is shown within the stipulated time, the name of the Company shall be removed from the register of Company and the directors of the company shall be liable for appropriate action under the Companies Act, 2013. The Company has given a reply to the notice on 23.03.2017 stating that the company is active and doing business, however, due to sheer inadvertence, the filing of the company is pending which will be completed within a period of 30 days. Despite the reply, the Respondent

issued public Notice in Form No. STK-5 on 07.04.2017 reiterating the same points as disclosed in the notice dated 11.03.2017 referred supra. Further, the respondent issued public notice in Form No.STK-5A on 27.04.2017 containing the same particulars disclosed in the notice dated 11.03.2017 supra.

4. In the meantime, the company has filed the financial statements for the financial year ended 31.03.2015 in Form AOC4 vide SRN: G41595638 and Annual return in form MGT-7 vide SRN:G41596859. The petitioner further states that the financial statement for the year ended 31.03.2016 is ready but the same could not be filed with the respondent. The above facts were informed by the company to the respondent vide letter dated 10.05.2017 with a request that no further action may be taken in this regard.

5. The Respondent vide public notice No. ROCP/STK-7/248(5)/2017/PUB/1/80004 dated 11.07.2017 issued under Sub-section (5) of the Section 248 of the Companies Act,2013 has struck off the name of the said Company and the same was published in the Gazette of India on 22.07.2017.

6. The Petitioner in order to show that the Company was carrying out business on the date of receipt of notice in Form STK I as well as on the date of struck off provided the following documents:

1. List of employees about 38 in number;
2. Various purchase orders raised by various customers of the company;
3. Bank statements of two bank accounts with Axis Bank from January, 2017 to June, 2017.
4. Copy of registration under Shop and Establishment Act
5. Invoices raised by the company from Jan, 2017 to August 2017;
6. Service tax returns filed from Jan 2017 to August 2017
7. TDS returns filed from Jan 2017 to August 2017
8. Software Installation certificate from Jan 2017 to August 2017.

9. Salary statements and instruction to bankers to credit salary for the staff from Jan 2017 to August 2017

10. Electricity bill from Jan 2017 to August 2017

11. Index II of leave and license agreement

12. Telephone bills from Jan 2017 to August 2017.

7. Section 252(3) stipulates that "if a company, or any member or creditor or workman thereof feels aggrieved by the company having its name struck off from the register of companies, the Tribunal on an application made by the company, member, creditor or workman before the expiry of twenty years from the publication in the Official Gazette of the notice under sub-section (5) of Section 248 may, if satisfied that the company was, at the time of its name being struck off, carrying on business or in operation or otherwise it is just that the name of the company be restored to the register of companies, order the name of the company to be restored to the register of companies, and the Tribunal may, by the order, give such other directions and make such provisions as deemed just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off from the register of companies".

8. On seeing the provisions of Section 252(3), the documents referred above, the report of the Registrar of Companies, Pune and after hearing the submissions of the Ld. Practicing Company Secretary, this Bench is of the view that the Company was in existence and it is a going concern and hence, the Respondent is directed to restore the name of the Company in the Register of Companies from the date of strike off of the company and treat the company as if it has never been struck off.

9. The Petition is disposed of in the above terms.

Sd/-

V. NALLASENAPATHY
Member(Technical)

Sd/-

B. S. V. PRAKASH KUMAR
Member (Judicial)