

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

CP No.: 349/252/NCLT/MB/MAH/2017

Under section <sup>252</sup>~~41~~ of the Companies Act, 2013

In the matter of

M/s. Kasturi Infracon Private Limited  
....Petitioner No. 1 (Company)

Mr. Bharat Agarwal  
.... Petitioner No. 2  
v.

Registrar of Companies, Pune  
..... Respondent

Heard on : 29.09.2017  
Order delivered on: 05.10.2017

**Coram :**

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

**For the Petitioner :**

Adv. Hemant Sethi, i/b. Hemant Sethi & Co. – Advocates for the Petitioners.

**For the Repondent :**

Ms. Purnima Awasthi – Advocate for the Respondets.

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

**ORDER**

1. This present petition has been filed under Section 252 of the Companies Act, 2013 (hereinafter as Act) by "Kasturi Infracon Private Limited" (hereinafter as **Petitioner Company**) praying for restoring its name in the Register maintained by the Registrar of Companies, Pune (hereinafter as **RoC**).

2. This petition is filed before NCLT, Mumbai Bench on 3<sup>rd</sup> August, 2017 under provisions of S. 252 of the Act. And thereafter listed for hearing on 11<sup>th</sup> August, 2017, 11<sup>th</sup> September, 2017 and then finally on 29<sup>th</sup> September, 2017.
3. The Petitioner Company was incorporated with the RoC, Pune on 12<sup>th</sup> November, 2008 as a Private Limited Company in the city of Pune, Maharashtra having CIN : U45203PN2008PTC133038.
4. The Authorised Share Capital of the Petitioner Company is ₹ 5,00,000/- comprising of 50,000/- equity shares of ₹ 10/- each.
5. The issued, Subscribed and Paid-up share capital of the Petitioner Company is ₹ 1,00,000/- comprising of 10,000 equity shares of ₹ 10/- each.
6. The Petitioner Company is involved in Real Estate business and includes, inter alia, Contractors, Developers and Builders etc.
7. 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, as noticed in the Notice from the RoC i.e. STK – 1 dated 7<sup>th</sup> March, 2017.

**Facts of the Case:**

8. The facts of the case as stated by the Learned Counsel for the Petitioners are as follows:

*“..... vi. The Petitioners submit that Petitioner No. 2 as Director of Petitioner No. 1 received notice from the office of Registrar of companies, Pune on 7<sup>th</sup> March, 2017 under section 248 (1) & (2) of the Companies act, 2013 stating therein that the Company is not carrying on any business or operation for a period of two immediately preceding financial years.*

*well*



vii. *On receipt of the said notice the Petitioner No. 2 directed his staff to find out as to why such notice was received. The Petitioner No. 2 learned that due to non-filing of Annual returns for the last 2 years on account of lapse of the accounts departments such notice was received.*

viii. *On being made aware, the Directors decided to file Annual Returns with the Registrar of Companies to make good on the default in filing the necessary compliances before the same. Inadvertently, the Petitioner Company could not file its Balance Sheet with the Registrar of Companies. The Petitioner Company has attempted to make good on the default by making substantial compliance before the Registrar of Companies. The Petitioner has taken this step to ensure smooth and regular functioning of the Company.*

x. *on 14<sup>th</sup> July, 2017 when the Petitioners wanted to confirm status of forms filed from MCA website when the Petitioners also checked the Master Data of the Company and noted that the status of the Company was shown as **Strike off**...."*

**Submissions from the Petitioners:**

9. The Learned Advocate for the Petitioners submits that, the Petitioner Company is a running Company and 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.

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10. The Petitioner Company has its Audited Balance Sheet as on 31<sup>st</sup> March, 2016. As on such date, the Petitioner Company has Reserve and Surplus of ₹ 2,36,72,213.36/-.
11. The Company has also filed its Income tax returns for the Assessment Year 2016-17. Copy of acknowledgement has also been attached to the Petition.
12. It is further submitted that, Annual Returns for the F.Y. 2014-2015 and 2015-2016 were uploaded with RoC along with form MGT – 7 on payment of requisite fees on 15.05.2017. The copies of challan and form are annexed to the Petition. Further, although it was uploaded but remained unattended and the name of the Petitioner Company was not restored in the Register of RoC.
13. The Learned Advocate for the Petitioners 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. Further the Petitioner Company is willing to file any other necessary document which are required by the RoC.

**Submissions from the Respondent/RoC:**

14. The Learned Advocate for the RoC is present and submitted that, the RoC has issued the notice in Form STK – 1 to the Petitioner Company on the ground that Company is not carrying any business or operation for a period of two immediately preceding Financial Years. This notice seeks representation from the Petitioner Company however, no such reply was received by the RoC.
15. Thus the RoC came to conclusion that, as the Petitioner Company has not filed the Annual Return and Balance Sheet for the year ended on 2014-2015 and 2015-2016 and therefore contravened the provisions of S. 92 and S. 137 of the Act. Hence, the name was struck off from the Register.





16. The RoC has no malafied intention to remove the name of the Petitioner Company from the Register of the RoC. It is the Petitioner Company remained in the default.
17. However, it is further submitted that, the RoC have no objection to restore the name of the Petitioner Company, as the Petitioner Company is willing to comply with the provisions of the Act, subject to imposition of Cost.

**Findings:**

18. On perusal of the submissions made and keeping in view the Law laid down, which is relied by the Learned Advocate for the Petitioners, in the matter of *Purushottamdass and Anr. (Bulakidas Mohta Co. P. Ltd.) v. Registrar of Companies, Maharashtra & Ors., (1986) 60 Comp Cas 154 (Bom)*, the Hon'ble Bombay High Court has held inter alia;

*"the object of Section 560(6) of the Companies Act is to give a chance to the company, its members and creditors to revive the company which has been struck off by the Registrar of Companies, within period of 20 years, and give them an opportunity of carrying on the business only after the company judge is satisfied that such restoration is necessary in the interest of justice"*

19. Further, the facts and circumstances of the case have enlightened that, the Income Tax Returns were filed for a F.Y. 2014-2015 on 29<sup>th</sup> October, 2015 and for the F.Y. 2015-2016 on 17<sup>th</sup> Oct. 2016. Further the accounts of the Petitioner Company were audited and the audited accounts have been approved within prescribed time. Further, it is not a case that, the Petitioner Company is not actively engage in the business or not stopped business activities; as apprehended by the Learned RoC, but the Petitioner Company has substantial turnover and business activities. Further, the Petitioner Company had tried to fulfil the requirement of filing of Annual Statement under the Companies Act, 2013 but remained unsuccessful. However,

undertakes to comply the provisions of Companies Act, 2013 by filing Annual Statement immediately hereafter, if so permitted.

20. Hence, upon considering the facts and circumstances of this present petition, 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.

21. Accordingly, this Petition is allowed. The restoration of the Petitioner Company's name to the Register of Companies maintained by the RoC Pune, is hereby ordered, with a direction that the Petitioner Company shall comply with the Provisions of the Act. And further it will be subject to payment of costs of ₹ 25,000/-, to be paid by way of Demand Draft in favour of "Pay and Accounts Officer, Ministry of Corporate Affairs, Mumbai", within 30 days from the receipt of the duly certified copy of this Order, to this office.

22. This Petition bearing No. 349/252/NCLT/MB/2017 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.

23. Ordered accordingly.

Sd/-

**BHASKARA PANTULA MOHAN**  
**MEMBER (JUDICIAL)**

Sd/-

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

**Dated : 05.10.2017**