

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH**

C.P. No.23/2017

Under Section 252(3) of the Companies Act, 2013

In the matter of:

M/s Mekong Engineering & Infrastructures (P) Ltd. ... Petitioner

-Versus-

Registrar of Companies, N.E. Region, Shillong. ... Respondent

Order delivered on 07-12-2017

Coram:

Hon'ble Mr. Justice P K Saikia, Member(J)

.....

For the Petitioners : Mr. Amit Pareek, CS
Mr. C. S. Sharma, CS

For the Respondents : Mr. D. Mam, Advocate
Ms. Ankita Goswami, Advocate

ORDER

Heard Mr. Amit Pareek, CS and Mr C.S. Sharma, CS, the learned counsel appearing on behalf of the petitioner. Also heard Mr D. Mam, Advocate and Ms. Ankita Goswami, Advocate, the learned counsel representing the ROC, respondent herein.

2. This application is preferred by the petitioner under Section 252 (3) of the Companies Act, 2013 (in short "the Act of 2013"), seeking the following relief/s: -

"Relief(s) sought:

Setting aside the order of strike off passed by the Respondent and pass necessary order for the restoration of the name of Company on the Register of Companies maintained by the Registrar of Companies, N. E. Region, Shillong without any cost and penalty.

And/or such other order/orders direction/directions as may deem just and proper in terms of Section 252(3) of the Companies Act, 2013."

3. This Bench on receipt of the petition, passed the following order on 4-11-2017. For ready reference the order dated 14-11-2017 is reproduced below: -

"ORDER

Date of Order: 14th November 2017.

Mr C.S. Amit Pareek, C.S. and Mr C.S. Sharma are present on behalf of the applicant/petitioner. On the other hand Mr D. Mam, learned Advocate represents the ROC respondent herein.

2. Mr D. Mam, learned Advocate for the respondents prays for some time to respond to the allegations made in the petition under Section 252 of the Companies Act, 2013 seeking restoration of the name of the applicant/petitioner company to the Register of Companies maintained by the ROC. He also prays for some time to file response on behalf of the respondent ROC.

3. I have heard both the parties. The legal representative of the petitioner submits that the matter requires to be heard as early as possible and it has been pending not because of any fault on the part of the petitioner. He further submits that the petitioner is facing great difficulty in the conduct of business of the company and, therefore, urged this Bench to dispose of the matter on the basis of materials available on record.

4. On hearing the parties, I find it expedient to allow some more time to the respondents to file their reply to the allegations made in the petition.

5. List this matter on 07.12.2017."

4. In terms of the above order of this Bench dated 14-11-2017, the respondent ROC submitted their reply. In their reply dated 14-11-2017, the ROC disputed several claims of the petitioner made in its petition. For ready reference, the relevant portion of the reply of the ROC is reproduced below: -

"1. That the averments made by the petitioner in para 1 of the petition that the subject company had not filed financial statements and Annual returns only for the financial year 2015-16 is false, and your respondent humbly submits that the subject company had not filed its statutory returns as required under the provisions of section 92 and 137 of the Companies Act, 2013, for a consecutive period of three financial years i.e. from 31.03.2014 to 31.03.2016 (copy of filing details as available on MCA portal is enclosed herewith) and therefore, it was struck off from the Register of Companies in due compliance of section 248 of the Companies Act, 2013, after issuance of notice dated 08.03.2017.

2. That with respect to averments made in sub-para 1, b, c and d of para 2, except for what are matters of facts and records everything is disputed and denied.

3. That with respect to averment made in sub-para e of para 2, your respondent humbly submits that the subject company had not been filing its statutory returns for a consecutive period of three financial years from financial year ended 31.03.2014 to

31.03.2016 and not just for financial years 2015-16 as admitted by the petitioner in the said para, and therefore, the subject company was struck off in due compliance of section 248 of the Companies Act, 2013 (copy of filing details of the company available on the MCA portal is attached).

4. That the averments made in sub-para f, g and h of para 2 are false and misleading. Your respondent humbly submits that notice dated 08.03.2017, u/s 248 of the Companies Act, were issued to all the directors, as well as sent at the address of the registered office of the company allowing prescribed time required by the statutory provisions of the Companies Act and except for one notice addressed to one of the directors viz. Sabita Sarmah, none of the notices returned undelivered, which implies that the notices were duly delivered to all the addressees.

5. That the averment made in sub-para l of para 2 of the petition is false and misleading and it is humbly submitted that the subject company had not been filing its statutory returns required under the provisions of Companies Act since the financial year ended 31.03.2014 (copy of filing details of the company available on the MCA portal is attached).

6. That with respect to averment made in sub-para l of para 2, it may kindly be noted by the Hon'ble Tribunal that the subject company has filed its Balance sheet and annual return for the financial year ended 31.03.2014 and 31.03.2015 only on 26.06.2017 and 28.06.2017. It is further submitted that the subject company was struck off on 09.06.2017 and because of technical problems the same could not be updated on the MCA system, as a result of which the company was able to file its statutory returns even after the company being struck off from the Register of Companies.

7. That the averment made in sub-para k of para 2 is incorrect and it is humbly submitted to the Hon'ble Tribunal that the company had not filed its balance sheet and annual return for a consecutive period of two years i.e. for financial year ended 31.03.2014 and 31.03.2015 (copy of filing details attached) and as per provisions of section 248 of the Companies Act, 2013, -

Sec.248(1) Where the Registrar has reasonable cause to believe that—

(a)

(c) a 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 a dormant company under section 455, he shall send a notice to the company and all the directors of the company, of his intention to remove the name of the company from the register of companies and requesting them to send their representations along with copies of the relevant documents, if any, within a period of thirty days from the date of the notice.

Since the subject company did not file its financial statements and annual returns for a consecutive period of two financial years i.e. for the FY ended 2014 and 2015, and did not also apply to the Registrar for obtaining the status of Dormant company u/s 455, therefore, your respondent had reasonable grounds to believe that the company is not carrying on any business operation for the aforesaid consecutive financial years and therefore, after issuance of notice dated 08.03.2017 no representation was received from the company or its direction within the prescribed time.

8. That averments made in sub-para l, m and n of para 2 are submissions by the petitioner and may be considered by the Hon'ble Tribunal on its own merit.

9. That with respect to averment made in para 3 and 4, it is submitted that NCLT has jurisdiction u/s 252 of Companies Act, 2013 and with respect to limitation it is submitted that sub-clause 3 of Section 252 of Companies Act, 2013 stipulates that if a company or any member or creditor or workmen 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 workmen before the expiry of 20 years from the publication in 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, the Tribunal may, by 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. The name of the subject company was struck off and dissolved on 09.06.2017 and thus the application appears to be within the limitation prescribed subject to proof of the fact that petitioner is a shareholder/member of the struck off company.

10. That with respect to the averments made in para 5 and 6, except for what are matters of facts and record everything is disputed and denied and the petitioner may be put to strict proof thereof.

5. In this connection, I have heard Mr. Amit Pareek and Mr. C. S. Sharma, learned counsel appearing for the petitioner and Mr. D. Mam and Ms. Ankita Goswami, learned counsel appearing for the respondent ROC.

6. Considering the submissions advanced and having regard to the averments made by the petitioner in its petition and the reply filed by the respondent ROC and also keeping in view the prayer made by the respondent ROC, I find it necessary to accept the prayer of the petitioner, in the following terms: -

- (i) The petitioner shall comply with all statutory provisions of the Companies Act, 2013 and file its pending statutory returns as per law prescribed, within 30 days of the restoration order being passed.
- (ii) The petitioner shall pay the restoration cost of Rs.10,000/- (Rupees Ten thousand only) to the Ministry of Corporate Affairs, Government of India within 30 (thirty) days from today.
- (iii) The petitioner shall file an affidavit in due course affirming that the aforesaid directions are complied with.

7. When the aforesaid conditions are complied with, the respondent will take consequent steps for restoration of the petitioner Company i. e. M/s. Mekong Engineering & Infrastructures (P) Ltd.
8. With the aforesaid directions, the petition in hand, is disposed of.
9. The Registry is directed to send copy of this order to the parties concerned.

Sdf

Member (Judicial)
National Company Law Tribunal,
Guwahati Bench, Guwahati.

Dated Guwahati, the 07th December, 2017
Deka/07-12-2017