

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH**

Diary No.01(26) A/2018

Under Section 252 (1) of the Companies Act, 2013

In the matter of:

Kuber Polymers Private Limited

... Petitioner

-Versus-

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

... Respondent

Coram:

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

.....

ORDER

Date of Order: 13th February 2018.

This application has been filed under Section 252 (1) of the Companies Act of 2013 (in short, Act of 2013) seeking the following reliefs:

- "a *To allow this petition and pass an order thereby directing the respondent for restoration of its name in the Register of the respondent, as if name of the company had not been struck off in accordance with section 252 (1) of the Companies Act, 2013.*
- b. *Since the name of the Company was struck off by the respondent, the respondent be further directed not to initiate with penal action against the petitioner for default in filing of its annual return under section 92 of the Companies Act 2013 (Section 162 of the Companies Act 1956) and for default in filling the audited financial statements under section 137 of the Companies Act 2013 (Section 220 of the Companies Act 1956) or under any other provision of the Act.*

- c. *The Hon'ble Tribunal may pass such further orders as it deem fit in the circumstances of the matter.*
- d. *That the petitioner declares that the interest of none of the creditor/ shareholder or any person at large is prejudiced if the name of the Company restored in the register of Companies. Further, no one will be prejudiced if the name of the Company is restored.*
- e. *Unless an order as prayed for is made, the Company will suffer irreparable loss and prejudice."*

2. Seen the note of the Registry. Based on the note of the Registry, the application is admitted. Accordingly, Registry is directed to register the same.

3. Heard Ms S. Tejawat, C.A. for the petitioner. In order to understand the dispute, which is highlighted in the present proceeding, one needs to go through the petition, more particularly, paragraph 4 thereof. For ready reference, paragraph 4 is reproduced below:

"This petition has been filed by Kuber Polymers Private Limited, (hereinafter known as the "Petitioner") under Section 252(1) of the Companies Act, 2013 praying for restoration of its name in the register of companies maintained by the Registrar of Companies, Shillong.

- i) *The petitioner was incorporated with the Registrar of Companies, Assam, Meghalaya, Tripura, Mizoram, and Nagaland & Arunachal Pradesh (hereinafter called the "respondent" as a Company limited by shares on 13th March, 2006 vide Certificate of incorporation No: 18-008087 of 2005-06 having CIN no.U72100ML2006PTC008087 with the object:*
 - (i) *To manufacture industrial rubber Products, motor and bicycle tyres, tubes, rubber mattings and Fittings, gloves, mattresses, Sponges.*
 - (ii) *To carry on the Business planters and cultivators of rubber plants, and any other plants producing anything of a similar character.*
 - (iii) *To tap the rubber trees, prepare, process and manufacture rubber product and bye-products and exploit the material for profit in the market both in India and Abroad.*
 - (iv) *To buy, procure or otherwise arrange for and enter into contract for the supply of rubber and rubber products and bye—products.*

Presently, the registered office of the petitioner is stated to be situated at Fair Beau Cottage Kench's Trace, Shillong—793004, Meghalaya. In support of this statement, the copy of the Memorandum & Articles of Association of the Company along with certificate of incorporation are annexed to this petition and marked as Annexure "A1".

- ii) *The petitioner begs to state that the company has been active since incorporation. The Company has maintained a Bank account with State Bank of India, Commercial Branch. In support of this statement, copies*

of Bank statements from April 1st, 2012 to 31st December, 2017 are annexed to this petition and marked as Annexure "B1".

- iii) The petitioner to prove its existence during the period 1st April 2012 and onwards further submits the copies of its audited Balance sheet for the financial year 2012-13 to 2016-17 and annexed to this petition and marked as Annexure "C1 to C5".
- iv) The petitioner company has during financial year 2013-14 to 2016-17 also held and convened, from time to time the Annual General Meetings of the Shareholders of the Petitioner Company and minutes of the same annexed to this petition and marked as Annexure "D1 to D5".
- v) The petitioner avers that the accounts of the company were prepared and audited every year, and same is reflected by the annexure attached to the petition. The petitioner company had engaged the service of a Chartered Accountant to perform the task of filing the statutory documents with the office of the respondent, due to some family set back, outstation location of the directors of the company and followed by financial difficulties and not availability of clerical staff with the Petitioner Company due to its remote location, lack of professional guidance and without any mala fide intention the directors concerned could not keep a track of status of filing of required statutory returns.
- vi) It is further averred that the Chartered Accountant who has since resigned, failed to file the requisite Annual Return for the period 2012-13 onwards which were required to be filed by the petitioner under section 159 of the Companies Act 1956 (section 92 of the Companies act 2013) along with audited Balance sheet for the period 2012-13 onwards under section 220 of the companies Act 1956 (137 of the Companies act 2013).
- vii) The petitioner states that it came to the notice of the Petitioner Company has been struck off under section 560 of the Companies Act, 1956 (Section 252 (1) of the new Companies Act) only recently from portal of Ministry of Corporate Affairs. Further, it is submitted that the Petitioner Company has been trying to maintain all its requisite documents as per the provision of the Companies Act, as applicable to it but owing to the inadvertent and unavoidable conditions, the statutory documents as required under the law could not be filed with respondent in time. The status of the Company on web portal of the MCA shows 'Strike off' and the same is annexed to this petition and marked as Annexure "E".
- viii) The petitioner begs to state that it did not receive any show cause notice/letters as required under Section 560(1) and (2) of the Companies act 1956, nor was it afforded any opportunity of being heard before action under Section 560 (5) of the Companies Act 1956 was taken by the respondent."

4. From a perusal of the petition and also from the arguments advanced by Ms S. Tejawat, C.A., it appears to me that the petitioners alleged that the company aforementioned was struck off from the Register of Companies by the respondent/ROC in violation of the procedure prescribed in Section 252 of the Act of 2013, which reportedly caused huge injustice to the petitioner. The petitioner,

therefore, approached this Bench seeking the reliefs aforesaid so that the petitioner can start the business in accordance with the procedure prescribed, more so, when permission necessary from the concerned Government to initiate the project has already been made available to the petitioner.

5. Ms Tejawat, C.A., also submits that a copy of the petition has already been served on the Registrar of Companies (in short, ROC), N.E. Region, Shillong. However, Registry is directed to send a copy of this order with all connected documents to the ROC, Shillong in order to respond to the allegations in the present proceeding.

6. The Registry is further directed to send a copy of the petition and other documents to Mr S.C. Keyal, Standing Counsel representing the respondent/ROC.

7. The petitioner is also directed to submit an affidavit affirming compliance with the directions rendered in this order within 5 days.

8. List this matter on 07.03.2018.

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

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