

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH: GUWAHATI**

Diary No.801/2018

*Under Section: 252(3) of the Companies Act, 2013 read with Rule 87 of the NCLT
Rules, 2016 (Amended)*

In the matter of:

Synergy Composites Pvt. Ltd.	... Petitioner
-versus-	
Registrar of Companies, Shillong	... Respondent

Coram:

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

.....

ORDER

Date of Order: 29th January 2018

Heard Mr D. Senapati & Mr M. Sahewalla, learned Advocates appearing on behalf of the petitioner company.

2. This application has been filed by Synergy Composites Pvt. Ltd., a private company limited by shares, having its Registered Office at Dhankheti, Shillong, under section 252 (3) of the Companies Act, 2013 (in short "the Act of 2013") read with Rule 87(A) of the National Company Law Tribunal Rules, 2016 (in short "the Rules of 2016" as amended till date, seeking following reliefs:

"To declare that the act of striking off the name of Synergy Composites Private Limited from the Register of Companies by the Registrar of Companies, Shillong is illegal, without and/or in excess of jurisdiction, non-est and null and void ab initio.

To quash/set aside the order dated 27.6.2011 and/or any other passed on any other date by the Registrar of Companies whereby the name of Synergy

Composites Private Limited has been struck off the Register and the Company dissolved.

To quash/set aside the Gazette Notification, if any, published in pursuance of the aforementioned order dated 27.6.2011 and/or any other date.

To pass orders directing the respondent that the name of the company be restored to the Register of Companies and all other persons in the same position as it the name of the Company had never been struck off for all purposes and in all matters relating to the Company, within the specific time as the Hon'ble Tribunal may deem fit and proper.

To pass such further order or orders and/or direction/directions as to this Hon'ble Tribunal may deem fit and proper."

3. In that connection, it has been alleged that the name of the petitioner company has been, most illegally, struck off by the respondent Registrar of Companies, Shillong on 27.06.2011 in total violation of the mandate rendered in Section 560 of the Companies Act, 1956. For ready reference, relevant part of said section is reproduced below:

"(1) Where the Registrar has reasonable cause to believe that a company is not carrying on business or in operation, he shall send to the company by post a letter inquiring whether the company is carrying on business or in operation.

(2) If the Registrar does not within one month of sending the letter receive any answer thereto, he shall, within fourteen days after the expiry of the month, send to the company by post a registered letter referring to the first letter, and stating that no answer thereto has been received and that, if an answer is not received to the second letter within one month from the date thereof, a notice will be published in the Official Gazette with a view to striking the name of the company off the register.

(3) If the Registrar either receives an answer from the company to the effect that it is not carrying on business or in operation, or does not within one month after sending the second letter receive any answer, he may publish in the Official Gazette, and send to the company by registered post, a notice that, at the expiration of three months from the date of that notice, the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved."

4. Mr D. Senapati further submits that the petitioner company has been carrying on business as stated in the Memorandum of Understanding (in short, MOU) as well as the Articles of Association (in short, AOA) at all relevant points of time. The company has even submitted the Income Tax Returns along with the Balance sheets of the company to the Income Tax Authorities regularly, which clearly indicates that the

company has been doing business as enunciated in the MOU and AOA even when it was struck off from the Register of Companies by the respondent authority.

6. It has also been submitted that the petitioner company is a very small company registered with a share capital of Rs.10 lacs in the year 2001. Since it is a very small company and since it does not have the facility of a whole-time Company Secretary, it was not aware of all the nitty-gritties prescribed in the Companies Act which includes regular filing of statutory reports to the concerned Registrar of Companies.

7. In that connection, my attention has been drawn to paragraph 4.26 of the application. For ready reference, same is reproduced below:

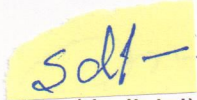
"That the applicant Company has been maintaining all its requisite documents as per the provisions of the Act, but the Annual Returns and Financial Statements required to be filed under the provisions of the Act, could not be filed by the applicant Company in time with the Respondent as being a small private Limited Company, it did not have the benefit of the services of a Company Secretary and it was under the bona fide belief that only Public Limited Companies are required to file such documents and that Private Limited Companies are not required to do so."

12. The learned Advocate for the petitioner company submits that copy of the application has already been served on the ROC. In that connection, an affidavit has also been filed confirming the above statements.

13. For the ends of justice, I find it necessary to ask the ROC to submit a representation as to the allegations made in the present application.

14. Registry to send a copy of this order to the ROC since the copy of the application and other connected papers are said to have been furnished to the ROC.

15. List this matter on 26.02.2018.


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

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