

ATTENDANCE-CUM-ORDER SHEET OF HEARING

NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH

C.P.No.10/252/GB/2017

P.K.D. Securities Ltd.

... Applicant

- versus -

Registrar of Companies, Shillong

... Respondent

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

Date of Order: 19th April 2017

Name of the Company	P.K.D. Securities Ltd.
Under Section	252

Sl. No.	Name & Designation of Authorized Representative (IN CAPITAL LETTERS)	Appearing on behalf of	Signature with date
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ORDER

Heard Mr H.S. Kumbhat, Chartered Accountant, on behalf of the petitioner company.

2. This application has been filed seeking the following reliefs:

"The members right to seek restoration is not lost as long as 20 years from the date of notification in official gazette for striking off the name have not expired. The Applicant's submission is fortified by the ratio in the judgment of the Bombay High court in case of Purshottam Dass and Another -vs- Registrar of Companies (1986) 60 company Cases - 154. It was also held in the said case that where a company had been struck off, it did not cease to exist for all legal purposes and any existing action was not absolutely and irrevocably at an end but was instead capable of being revived, if the company is restored to the register.

"The object of section 252 (3) of the Companies Act, 2013 (earlier 560 (6) of the Companies Act, 1956) is to give chance to a company, its members and creditors to revive the company whose name has been struck off, within a period of 20 years and to give it an opportunity to resume and carry on the business. Since the date the Petitioner's name was struck off, there is a sea change in the business environment and the Sensex is hovering near 30,000 now as against 3,000 in April, 2004. There are unlimited opportunities to avail under the existing economic policies. It is just and proper that the Petitioner's

name is restored to the Register of Companies and the Petitioner, its members and creditors are given the chance to resume the business and avail such opportunities.

"In the light of the facts stated above, Petitioner is an existing company and is in operation and thus its seeking directions of the Hon'ble Bench to the Respondents to restore its name is in consonance with law and precedents."

3. This court by its order dated 05.04.2017 had allowed the petitioner herein to file some additional documents under an affidavit to demonstrate that when the petitioner company was struck off from the Register of Companies in 2004, it had been carrying on business and it has still been in operation even after its name was struck off from the Register of Companies. Accordingly, the petitioner has filed additional documents under an affidavit.

4. In order to understand the case of the petitioner, here, one needs to look into the background of the present proceeding. According to the petitioner, the petitioner company had been doing business in the capital markets in purchase and sale of shares, investment in mutual funds and other securities. However, due to worldwide depression in the capital markets during the years 2001-2003, the petitioner company suffered heavy losses for several consecutive years and as such, it was not in a position to carry on the business of the company any longer without incurring heavy losses. Therefore, the petitioner company made application before the Registrar of Companies seeking permission to strike off its name from the Register of Companies. Accordingly, the name of the company was struck off from the Register of Companies in 2004.

5. Now, it has been submitted that the business which was carried on by the company has seen huge upward surge over the last couple of years since there has been incredible growth in the capital markets business. In that connection, it has been stated that when the name of the company was struck off, the India Sensex Stock Market Index, an indicator of the pulse of capital markets, was 3000. However, its index rose to 30,000 in 2016 which indicates huge boom in the business concerned.

5. That apart, Government of India too has changed the business policies in such a way that such policies encourage the entrepreneurs in various fields in the country to take up more and more commercial enterprises of different kinds. That being the position, the petitioner company wants to take advantage of the changed

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situation and has, therefore, come up with present petition seeking restoration of its name in the Register of Companies.

6. Mr H.S. Kumbhat, CA, appearing on behalf of the petitioner company submits that the company is aggrieved by the striking off of its name from the Register of Companies although striking off was done at the behest of the petitioner company itself. According to Mr Kumbhat, if the petitioner company can establish that it is aggrieved by the striking off of its name from the Register of Companies, then, it is well within its domain to file application seeking restoration although striking off was done at the behest of the company itself. In support of his contention, my attention has been drawn to the decision of the Hon'ble Delhi High Court in the case of **Intec Corporation Pvt. Ltd. -vs- Registrar of Companies, N.C.T. of Delhi & Haryana**, reported in India Kanoon.

7. In the aforesaid case, the Hon'ble Delhi High Court, after surveying various decisions came to the conclusion that even if the name of a company was struck off from the Register of Companies on its own motion, the name of such company can still be restored to the Register of Companies if the conditions specified in Section 560 (6) of the Companies Act, 1956 (corresponding to Section 252 (3) of the Companies Act, 2013) are fulfilled. For ready reference, relevant part of the aforesaid judgment is reproduced below:

"the Petitioner Company, by way of present petition under Section 560 (6) of the Act, seeks restoration of its name in the Register of Companies maintained by the Respondent, on the ground that there has been a change of business environment in the country. It has been stated by counsel appearing on behalf of the Petitioner Company that because of government's special attention towards case of doing business in the country, there is a renewed excitement in the air-conditioning market and that it is expected to grow at a rapid pace of upto 12% per annum. It has been further stated that the Petitioner Company is contemplating to start a manufacturing unit for manufacturing roof mounted air conditioners for railway.

"Before I proceed to deal with the relief prayed for in present petition, it would be relevant to extract Section 560 (6) of the Act, which reads as hereunder: -

"(6) If a company, or any member or creditor thereof, feels aggrieved by the company having been struck off the register, the Court, on an application made by the company, member or creditor before the expiry twenty years from the publication in the Official Gazette of the notice aforesaid, may, if satisfied that the company was, at the time of the striking off, carrying on business or in operation or otherwise that it is just that the company be restored to the register, order the name of the company to be restored to the register; and the Court may, by the order, give such directions and make such provisions as seem 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."

"A bare reading of Section 560 (6) of the Act reveals that for the name of the Company to be restored in the Register of Companies, the petition should be instituted either by the company or any creditor or member thereof, aggrieved by the name of the company being struck off, within a period of twenty years from the date of publication of the notice under Section 560 (5) of the Act. The said Section further provides that it is only if the Court is satisfied that the company at the time when its name was struck off from the Register of Companies maintained by the Registrar of Companies, was carrying out business or was in operation or otherwise if the Court is of the view that it would be just to restore the name of the company to the Register of Companies maintained by the Registrar of Companies, that the Court would exercise the discretion conferred under Section 560 (6) of the Act.

"The issue whether the name of a company which has been struck off under the Fast Tract Exit Scheme can be restored subsequently, under Section 560 (6) of the Act, has been dealt with by the decision of this Court in *Siddhant Garg and Anr vs. Registrar of Companies and Anr.* reported as (2012) 187 DLT 501. In this decision, the Court whilst considering a petition under Section 560 of the Act, for restoration of the company's name in the Register of Companies, which was struck off under Simplified Exit Scheme, 2003, observed in para 26 of the report as follows: -

"As a matter of law, it cannot be said that where the company's name has been struck off on an application filed under Simplified Exist Scheme, the company cannot be restored. In fact, the Madhya Pradesh High Court in *VI Brij Fiscal Services P. Ltd. v. Registrar of Companies*, (2010) 155 Comp. Cas. 157 (MP) has restored a company which had been struck off under the Simplified Exist Scheme"

8. I have considered the submissions of Mr H.S. Kumbhat, CA, appearing on behalf of the petitioner company having regard to the statements made in the petition as well as the documents annexed therewith in the light of the decision relied on by the petitioner.

9. In view of the above, I find it necessary to issue notice to the concerned Registrar of Companies to reply to the claim made in the application.

10. The petitioner shall take steps by Speed Post/Registered Post with A/D within seven days from today.

11. List this matter on 19.05.2017.



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

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