

In the National Company Law Tribunal
Mumbai Bench.

CP No.71/252/NCLT/MB/MAH/2017

Under Section 252 read with Section 248 of Companies Act, 2013

In the matter of

Essar Concessions India Limited : Petitioner

V/s

Registrar of Companies, State of Maharashtra : Respondent

Order delivered on : 08.11.2017

Coram: 1. Hon'ble Shri M.K. Shrawat, Member (Judicial)
2. Hon'ble Shri Bhaskara Pantula Mohan (Judicial)

Present:

For the Petitioner(s): : 1. Mr. Vishal Phal,
2. Mr. Prasshant Berri, Advocates, I/b Beri & Co.

Per M.K. Shrawat, Member (Judicial).

ORDER

1. A Petition has been filed on 15-02-2017 under section 252 read with section 248 of the Companies Act, 2013 for restoration of the name of the Company with the Registrar of Companies, Mumbai.
2. Facts of the case are that the Petitioner Company is a majority shareholder by holding 99.90% shareholding of a Company viz. Kirandul Vizag Pipeline Pvt. Ltd. The said Company was incorporated on 03rd July 2012 with the RoC Mumbai. The Company was incorporated to undertake the construction and maintenance work of a 440 km. slurry pipelines from Kirandul to Vizag proposed by Essar Steel India. On 10th October, 2012 Essar Steel India Limited executed an Agreement with the said Company and thereby assigned the construction and maintenance of work of the proposed 440 kms. On 20th April, 2013, based on the aforesaid Agreement, Work Orders were placed by Essar Steel India Limited and an advance of ₹49,27,698/- were released from June 2013 to March 2014 with certain conditions. Due to the said assignment, from time to time the Applicant received communication from various authorities and also received permission for laying of iron ore slurry pipeline from Kirandul to Vizag. Placed on record are Purchase Order issued by Kirandul Vizag Pipeline Pvt. Ltd., as also Letter of Intent dated 03.11.2012 for supply of EPIL. To implement the said Contract, the Company had made application for right to way clearance with various statutory authorities. However, it is stated that the Ministry of Finance had introduced simplified scheme to enable the Registrar of Companies to weed out "dormant Companies". The

Petitioner has submitted that on 25th March, 2003, the Ministry of Finance issued a general circular to simplify the exit scheme to enable the dormant Companies to de-register its name from Register of Companies to simplify the procedure. Under the said simplified scheme, the defunct Companies were permitted to file application with the Registrar so that the name of the Company be struck off from the Register of RoC. As a consequence, vide a notice dated 08.07.2015 the name of the Company was declared as defunct and struck off the name of the Company.

2.1 As per the latest development it was found that in case of the said strike off, the clearances and permissions already received in the name of the said Company could not be used. Since the Petitioner is a majority shareholder, hence filed this Petition in the capacity of a member of the Company and pleaded to restore the name of the Company.

2.2 From the side of the RoC, it is informed that the Petitioner Company had applied under fast track exit scheme of MCA which was considered and vide Gazette Notification of 04th March 2016, the name of the Company was de-registered. It is also informed that the RoC has no powers to restore the name of the Company, however, the powers are vested with NCLT under section 252(3) of the Companies Act, 2013. According to the Respondent the Management of the Company had decided to take the said advantage of the exit scheme and passed a Resolution on 23.07.2014. Therefore, it was a conscious decision to file an application to strike off the name of the Company. The permissions and clearances were already received; even then the prayer was made for delisting of the name of the Company. It was not a case of simple oversight; pleaded by the RoC. According to the arguments, the Company should not keep on changing its stand because at that time when the name was struck off, it was contended that the Company was not carrying on any business. Before us although the Restoration was objected but a proposal was made that, in case the Application is admitted, then a cost be imposed for restoration.

2.3 Having heard the submissions of both the sides, we have noticed that under the provisions of section 248 of the Companies Act, 2013 vide Sub-section 2 can apply to the Registrar for removing the name of the Company from the Register of the Companies. In this case, on receiving this request the name was removed as prayed for. Later on it was noticed that inadvertently the said request was made. It was found that the permissions granted and clearances issued by the authorities in favour of the said Company could not be used on revival of the Special Purpose Vehicle (SPV) to undertake the construction and maintenance

work of 440 kms. slurry pipeline from Kirandul to Vizag proposed by Essar Steel India Limited (ESIL). An Agreement was executed by ESIL with the Company and Work Order was placed and an advance of ₹49,27,698/- was released. Due to this development and other circumstances, now the request is to direct the RoC to revive the name of the Company.

2.4 On perusal of section 252, Sub-section (3) of Companies Act, 2013, we have noticed that if a Company or any member is aggrieved having its name struck off from the Register of Companies, an application can be made to the Tribunal. If the Tribunal is satisfied that the Company was, at the time of its name being struck off, was carrying on business or in operation and also considered that it is fair and just that the name of the Company be restored to the Register of Companies, may pass an order directing that the name of the Company be restored to the Register of Companies and can also give such other directions as deemed just for placing the company in the same position as nearly as possible as if the name had not been struck off. By exercising the jurisdiction enshrined under the Statute as discussed above, we are of the view that the circumstances of the case warrants to pass an Order directing the Registrar of Companies, Mumbai to restore the name of the said Company back to the Register of Companies so that the business of the Company be also restored and should not get adversely affected. However, we also deem fit to impose a token amount as a restoration cost / fine on the Company as a deterrence, a sum of ₹50,000/- (Fifty Thousand Only). Subject to fulfilment of condition of payment of the amount of ₹50,000/-, immediately thereafter, the RoC shall comply with the direction of restoration of the name, only on completion of the formalities prescribed under the Companies Act. Petition allowed.

Sd/-

BHASKARA PANTULA MOHAN

Member (Judicial)

Date : 08.11.2017

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Sd/-

M.K. SHRAWAT

Member (Judicial)