

In the National Company Law Tribunal  
Mumbai Bench.

CP No.538/252(1)/NCLT/MB/MAH/2017

Under Section 252(1) of Companies Act, 2013

In the matter of

Wally's Infrastructure Private Limited : Petitioner

V/s

Registrar of Companies, Pune : Respondent

Order delivered on: 20.12.2017

Coram:

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

Present:

For the Petitioner : 1. Ms. Prachi Wazalwar, Advocate.

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

**ORDER**

1. This Petition is submitted on 12.10.2017 with the Prayer to restore the name of the Company by the Registrar of Companies, Pune by passing an Order under section 252 of the Companies Act, 2013.

2. A report of the RoC, Pune dated 22.11.2017 is on record, according to which the Petitioner Company had failed to file Statutory Returns (Annual Return and Balance Sheet and Financial Statement) for the accounting period ended on 31.03.2015 and 31.03.2016. It is intimated in the Report that the Ministry of Corporate Affairs, vide letter No. 3/53/2017-CL dated 17/02/2017 issued order to the RoC to initiate action under section 248 of the Companies Act 2013 against those companies which have failed to file statutory returns i.e. Annual return and financial statement for immediately two preceding financial years. Pursuant to the provisions of section 248 a Notice was issued in writing (Form STK-1) dated 11.03.2017 to the Company and to all the Directors intimating the default under section 248(1) of the Companies Act. According to the Report, it was intimated that the Notice was issued on the ground that the Company had not carried on the business or any operation for a period of two years immediately preceding the financial year and also not made any Application within such period for obtaining the status of a "dormant" Company as prescribed under section 455 of the Act. No reply was received from the side of the Company. According to RoC the Company had failed to



submit its annual return for the period 2014-15 and 2015-16 hence contravened the provisions of section 92 and section 137 of the Companies Act. As a result, the Learned RoC Pune invoked the provisions of section 248(5) of the Act by striking off the name from the Register of Companies. It was published in the official Gazette on 22.07.2017 vide No.166 GI/2017(Form STK-7) and it also placed on the official website of the Ministry of Corporate Affairs on 11.07.2017. Being aggrieved, this Petition is filed by the Company challenging the action of the Learned RoC.

3. From the side of the Applicant Learned A.R. Ms. Prachi Wazalwar represented the Petition and informed that the Company was incorporated on 15<sup>th</sup> February 2010 having his Registered Office at Satara Road, Pune to carry on the business of infrastructure development such as building of Roads, Bridges, Commercial Apartments, Hotels, Residential Houses, etc. The authorised share capital was ₹10 lakhs, however, the paid-up capital was ₹1 lakh only of Equity Shares of ₹10/- each. Four Promoter Directors were appointed each having 25 shares in number. It was an admitted factual position that the Company was struggling to get the business. However, according to Learned Representative, it is a going concern and expected to get an order for civil works from one of its client Mudrai Multi Facilities Services Private Limited and therefore received an amount of ₹75 lakhs in advance. The evidence of receipt of the said amount in advance for Work Order is stated to be annexed with the Petition. Our attention has been drawn that on receiving the advance the Petitioner Company in turn had also made an investment towards purchase of land and advanced money as per the following description.

Sr. No.	Name of Party	Description of transaction	Amount (in rupees)
1	Ocean Front Realtors	Advance for Purchase of Land	35,00,000
2	Kashmira Properties Private Limited	Advance for Purchase of Land	25,00,000

3.1 The Learned Representative has further pleaded that if permitted the Company is ready to file the Financial Statements. Due to struck off, the Company is facing hardship in execution of the said order. Learned Counsel has further pleaded that great loss will be caused if the name is not restored by RoC, Pune. It has also been pleaded that for the accounting period ended on 31.03.2016, the Company still had the time to submit the annual statement, although belatedly, as prescribed under section 403 of the Companies Act. Without waiting for the extended period of 270 days the Learned RoC had struck off the name for financial year 2015-16. The action of the RoC is, therefore, subject to appeal as prescribed under section 252(1) of the Act.



4. We have heard the submissions at length, perused the report of the RoC, Pune and examined the case records as well as the compilation filed. In our opinion the Company was incorporated but failed to commence the business. With a nominal fund of ₹1 lakh the Directors have incorporated the Company and thereafter no further contribution was made by the Directors as is evident from the Balance Sheet and financial statements annexed with the compilation pertaining to the period of commencement of the Company. On examination of STK-7 dated 11.7.2017 we have found that the Notice of striking off was issued pursuant to section 248(5) of the Companies Act. Along with this Notice, list of the Companies in default have also been annexed but there was no response. The financial statements have not demonstrated that there was any business activity during the entire period since inception. Only share capital of ₹1 lakh is reflected in the Balance Sheet which was declared as Cash in Hand, year after year. We have also examined the annexure of "Fixed Assets" and noticed that no fixed asset was acquired by the Company. There is no evidence on record that for the period of default the Company had filed the accounts or Balance Sheet with any other Statutory Authorities, for example, Income Tax Department.

4.1. Next is the argument about an Order for civil work. On examination of the evidences we have noticed that on one hand there was a credit of ₹75 lakhs in ICICI Bank on 12.06.2017, however, on the other hand, the amount was debited and thereafter a nominal balance remained in the Bank. A question was raised that if advance was given for allotment of plot for which the payments of ₹25 lakhs and ₹35 lakhs allegedly have been made, then why no registered document was executed, which is otherwise mandatory in respect of immovable properties. In the said Bank Account, there was an Opening Balance as on 1<sup>st</sup> April 2017 was ₹832.96 and as per the annexed statement the balance as on 27.06.2017 was ₹3,17,296/-. On one hand alleged contract amount was deposited but immediately thereafter it was withdrawn. To remove the suspicion that it was nothing but a make believe story, certain queries have been raised but the claim remained unsupported by corroborative evidences. The said attempt was made only after the Company was delisted. It was not in the regular course of business that a systematic business activity was carried out by the Company. Even we have examined that for assessment year 2016-17, Income Tax Return was filed on 11.05.2017 disclosing a current loss of ₹(-)14,818/-. The Auditor's report has not reported any business transaction but simply debited Administrative Expenses of ₹14,818/- which was claimed as a loss. Likewise, for the Assessment Year 2017-18, an Income Tax Return was filed on 09.10.2017 for a loss of ₹39,349/-, that too, due to debit of Administrative Expenses. Admittedly there was no systematic business transaction in the accounts of the Company.

4.2. In view of the above observation when there was no business transaction and whatever the transaction recorded for a short period was full of suspicion, hence in our



considered opinion, this Company does not deserve restoration in the records of the RoC Pune. The Petition is, therefore, dismissed.

Sd/-

**BHASKARA PANTULA MOHAN**

Member (Judicial)

Date : 20.12.2017

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Sd/-

**M.K. SHRAWAT**

Member (Judicial)