

NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH: GUWAHATI

CP No.27 of 2017

Under Section: 253(2) of the Companies Act, 2013

In the matter of:

Shanti Conductors Pvt. Ltd.

... Petitioner

-versus-

Registrar of Companies, N.E. Region, Shillong

... Respondent

Order delivered on 12-01-2018

Coram:

PRESENT

HON'BLE MR. JUSTICE P.K. SAIKIA, MEMBER (JUDICIAL)

For the Petitioner

: Mr. Amit Pareek, PCS
Mr. Chandra Shekhar Sharma, PCS

For the Respondent

: None

O R D E R

Heard Mr. A. Pareek and Mr. Chandra Shekhar Sharma, both PCS representing the for the petitioner company.

2. This is an application under Section 252 (3) of the Companies Act, 2013 (in short the "Act of 2013"), seeking restoration of the name of the petitioner company in the register of the Registrar of Companies, N. E. Region, Shillong (in short "ROC"). On receipt of this application, this Bench on 04th December, 2017, rendered the following order. For ready reference, the same is reproduced below.

"O R D E R

Date of Order: 4th December 2017.

Mr C.S.C. Shekhar Sharma, PCS is present on behalf of the petitioner.

2. This application has been filed under Section 252 (3) of the Companies Act of 2013 (in short, Act of 2013) seeking the following reliefs:

"It is most humbly prayed that your Lordships would be pleased to admit this petition, issue notices upon the Respondents and after hearing the parties be pleased to pass necessary direction upon the Respondent to restore the petitioner company upon such terms and conditions as to your Lordships may deem fit and proper and/or pass such other order or orders as you Lordships may deem fit and proper in the interest of justice.

And/or such other order/orders direction/directions as may deem just and proper in terms of Section 252(3) of the Companies, 2013."

3. Seen the note of the Registry wherefrom it appears that this application has been filed in accordance with the prescription of law and rules framed thereunder. Accordingly, Registry is directed to register the same.

4. Heard Mr C.S.C. Shekhar Sharma, PCS for the petitioner. Mr Sharma submits that this company was struck off from the Register of Companies on 18.05.2012 by the Registrar of Companies (in short, ROC), N.E. Region, Shillong. According to the legal representative of the petitioner, such order striking off the name of the company from the Register of Companies is unsustainable in law for reasons more than one.

5. In that connection, it is submitted that the company is a private limited company having two Directors. However, both the Directors had been suffering from several serious old-aged ailments and as such, they were not in a position to perform the duties pertaining to the Directors in time. Resultantly, for the Financial Year starting from 2008-09, the company was not in a position to submit its statutory report to the ROC in time and the same continued till 2011-12.

6. However, over all these years, the company has been doing business and in proof thereof, it has been regularly submitting its Income Tax Return to the authority concerned.

7. It has further been submitted that one of the Directors, namely, Sitaram Sovasaria, expired on 28.10.2014 and some other ailments also afflicted the surviving Shareholder/Director.

8. It has also been submitted that one more Director has been appointed in the meantime. However, for some technical difficulties necessary form, namely, Form No.32 (corresponding to Form No. DIR 12) seeking approval of the appointment of new Director of the Board of Directors of the company from the concerned authority could not be filed.

9. Referring to Section 252 of the Act of 2013 (corresponding to Section 560 of the Act of 1956), it has been submitted that law in the form of Section 252 mandates the ROC to issue notice to the defaulting company to show cause as to why it should not be struck off from the Registrar of companies.

10. The legal representative of the petitioner submits that the aforesaid directions are mandatory in nature and any act done in violation of those directions make such action unsustainable in law. In that view of the matter, the act of striking off of the name of the petitioner company from the Register of Companies in violation of Section 252 (3) cannot be sustained ----- argues the legal representative appearing for the petitioner.

11. I have heard the submissions advanced in the light of statements made in the petition filed under Section 252 (3) of the Act of 2013 and the documents annexed therewith. On doing so, I find reason to issue notice to the ROC, the sole respondent herein, to show cause as to why the reliefs, sought for, in the present proceeding should not be granted to the petitioner.

12. The legal representative of the petitioner submits that a copy of the petition and the connected documents have already been served on the ROC, the sole respondent herein.

13. The Registry is also directed to issue notice to Mr S.C. Keyal, learned counsel representing the respondent herein.

14. The ROC is allowed to file his reply on or before the next date instead of appearing in person.

15. List this matter on 12.01.2018."

3. In terms of the order dated 04-12-2017, this Bench has directed the learned counsel representing the Central Government to appear before this Bench. Also direction was given to the ROC, N. E. Region, Shillong. While none appears representing the Central Government, the ROC submitted his report on 08-12-2017. For ready reference, relevant part of the said report is also reproduced below:-

"I, Shri Chandan Kumar, S/o Binod Kumar Nutan, by profession Central Government Servant, aged about 37 years, by faith Hindu, a citizen of India and I am swearing this affidavit/reply on the basis of those comments available in the office records only:

1. That the averments made by the petitioner in para 1 of the petition that the subject company are matter of facts and records and your respondent humbly submits that the subject company was struck off from the Register of members in due compliance of the provisions of Section 560 of the Companies Act, 1956, after issuance of notice dated 13.10.2011, 14.11.2011, 26.12.2011 and 18.05.2012.
2. That with respect to averments made in sub-para a, b and c of para 2, except for what are matters of facts and records everything is disputed and denied.
3. That averments made in sub-para e, f, g and h of para 2, are submissions by the petitioner and the petitioner may be put to strict proof thereof.
4. That with respect to averment made in sub-para i and j of para 2, your respondent humbly submits that personal and commercial is not a ground for non-compliance of statutory provisions of the Companies Act and by not filing the statutory returns the company has defaulted in compliance of law.
5. That averments made in sub-para k and l of para 2, are submissions by the petitioner.
6. That averment made in sub-para m of para 2 is false and misleading and your respondent humbly submits that the company was struck off in due and complete compliance of section 560 of the Companies Act, 1956, and three notices dated 13.10.2011, 14.11.2011, 26.12.2011 were issued to the subject company requiring therein, in each of the aforesaid notices whether the company was carrying on business/operation or not and in case the company did, it was requested to reply within the time stated there in the notice so issued. Since, no reply was received from the company it was finally struck off u/s 560(5) by notice dated 18.05.2012. It is further submitted that, the plea that no notice was received by the company is wrong and misleading, as due notices had been issued to the company before finally striking off and also none of the notices addressed to the company returned undelivered.
7. That averment made in sub-para n of para 2 is baseless as three prior notices as mentioned herein before had been issued to the company and allowing the company due time to respond/represent itself as required under the statutory provisions. And finally since no reply was received from the company, it was finally struck off vide notice dated 18.05.2012.
8. That the averments made in sub-para o, p, q, r and s of para 2 are false and misleading. Your respondent humbly submits that notices dated 13.10.2011, 14.11.2011, 26.12.2011 and 18.05.2012 were issued by the respondent enquiring whether the company was carrying on business/operation or not and in case the company was operational it was requested to make representation/reply within the time stated in the aforesaid notices. Since, no reply was received in the office of the respondent, the name of the company was finally struck off by notice dated 18.05.2012.
9. The averments made in sub-para t, u and v of para 2 are submissions by the petitioner and may be considered by the Hon'ble Tribunal on merits.
10. That with respect to averments made in para 3 and 4, it is submitted that NCLT has jurisdiction u/s 252 of Companies Act, 2013 and with respect to limitation it is submitted that sub-clause 3 of Section 252 of Companies Act, 2013 stipulates that if a company or any member or creditor or workmen thereof feels aggrieved by the company having its name struck off from the register of companies, the Tribunal on an application made by the company, member, creditor or workmen before the expiry of 20 years from the publication in official gazette of the notice under sub-section 5 of Section 248 may, if satisfied that the company was, at the time of its name being struck off carrying on business or in operation or otherwise it is just that the name of the company be restored to the register of companies, the Tribunal may, by order give such other directions and make such provisions as deemed 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 from the register of companies. The name of the subject company was struck off and dissolved on 09.06.2017 and thus the application appears to be within the limitation prescribed subject to proof of the fact that petitioner is a shareholder/member of the struck off company.
11. That with regard to the averments made in para 5 and 6, except for what are matter of facts and record everything is disputed and denied and the petitioner may be put to strict proof thereof.
12. That averment made in para 9 are prayer of the petitioner before the Hon'ble Tribunal and the same may be considered by the Tribunal after due consideration of facts and representation made by your humble respondent."

4. However, the ROC has also prayed that the prayer of the petitioner may be allowed subject to certain conditions incorporated in his report. For ready reference, the relevant part of the same is reproduced below: -

"PRAYER"

That if the prayer of the petitioner is considered by the Hon'ble Tribunal on merits in restoration of the name of the company u/s 252(3) of the Companies Act, 2013, the Hon'ble Tribunal may be pleased to direct the petitioner to:

- i. *Comply with all statutory provisions of Companies Act, 2013 and file its pending statutory returns as per the Law prescribed within 30 days of the restoration order being passed.*
- ii. *To pay the restoration cost of not less than Rs.10,000/- (Rupees Ten Thousand only) payable to the Ministry of Corporate Affairs, Government of India since new company is registered with authorized Capital of Rs.1,00,00,000/- (Rupees One Crore only) they may have to pay registration fee and also to serve as a deterrent for the companies which are negligent in compliance with the provisions of Companies Act.*
- iii. *Such other order/directions as the Hon'ble Tribunal may deem fit and proper."*

5. I have also heard the legal representatives of the petitioner having regard to the materials on record. On consideration of the application, in the light of the materials on record, I am of the opinion that the prayer in the application needs to be accepted, on course, with certain conditions so recorded in the report of the ROC. Accordingly, the application is allowed with the following conditions: -

- (i) Upon restoration of the petitioner company to the register of the Companies, the company shall be presumed to be in existence at all the time, as if, the name of the Petitioner company had not been struck off.
- (ii) The petitioner company is directed to submit all the statutory documents i.e. Annual Returns and Balance Sheets etc. till date within a period of 45 days from the date of restoration of the petitioner company to the register of Companies.
- (iii) The petitioner company is further directed to deposit the prescribed filing fee in compliance with all the statutory requirements within 45 days from the date of restoration of the petitioner company to the Register of Companies.
- (iv) The petitioner company shall pay Rs.10,000/- (Rupees Ten Thousand only) as additional fee to the Ministry of Corporate Affairs, Government of India.
- (v) Subject to the above stipulation, the ROC should take necessary steps for restoration of the company.

6. Accordingly, the petition is allowed subject to fulfilment of the conditions aforesaid as indicated above.


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

Dated, Guwahati the 12th January, 2018.
Deka/12-01-2018