

NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH

CS NO. 27/252(3)/GB/2017
Diary No. 668/2017

Under Section 252 (3) of the Companies Act, 2013

In the matter of:

Shanti Conductors Private Limited

... Petitioner

-Versus-

Registrar of Companies, N.E. Region, Shillong.

... Respondent

Coram:

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

.....

ORDER

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 the 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.



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

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