

ATTENDANCE-CUM-ORDER SHEET OF HEARING

NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH

C.P. No. 11/252/GB/2017

North East Synthetics Pvt. Ltd.

- Petitioner

-Versus-

The Registrar of Companies, Shillong

- Respondent

PRESENTHon'ble Mr. Justice P K Saikia, Member (J)**Date of Order: 28.04.2017**

Name of the Company	
Under Section	252

Sl. No.	Name & Designation of Authorized Representative.(in Capital Letters).	Appearing on behalf of	Signature with date
---------	---	------------------------	---------------------

ORDER

1 Heard Mr. N.Sharma, learned Company Secretary appearing for the petitioner. The Registrar of Companies, N.E.Region is represented by Mr. Chandan Kumar, ROC, N.E.Region , Shillong-respondent.

2. This application has been filed under Section 252 seeking restoration of the petitioner's company to the Register of Companies as the company was allegedly struck off, without conducting any pre-decisional inquiry as required under the law.

3. This Tribunal on receiving the petition had rendered the following directions on 04.04.2017. For ready reference, the aforesaid order is quoted below:

- a) "To allow this petition and pass an order thereby directing the respondent for restoration of its name in the Register of the respondent, as if name of the

company had not been struck off, in accordance with section 252(3) of the companies Act, 2013.

- b) Since the name of the company was struck off by the respondent, the respondent be further directed not to initiate with penal action against the petitioner for default in filing of its annual returns under section 92 of the Companies Act 2013 (Section 162 of the Companies Act, 1956) and for default in filing the audited financial statements under Section 137 of the Companies Act 2013 (Section 220 of the Companies Act, 1956) or under any other provisions of the Act.
- c) The Hon'ble Tribunal may pass such further orders as it deem fit in the circumstances of the matter.
- d) That the petitioner declares that the interest of none of the creditor/shareholder or any person at large is prejudiced if the name of the Company restored in the register of Companies, maintained by the Registrar of Companies. Further, no one will be prejudiced if the name of the Company is restored.
- e) Unless an order as prayed for is made, the Company will suffer irreparable loss and prejudice.
 - i. The petition has been made bona fide and is in the interest of justice.
 - ii. The petitioner further craves leave to submit further documents and make further submissions (oral) and written) as and when required.

2. The petitioner company, limited by shares, was incorporated with the Registrar of Companies, Shillong (hereinafter referred to as Company) on 6th January, 2005 vide Incorporation Certificate No. 13-07616 of 2004-2005. After the securing of the Incorporation Certificate, the company started doing such business as mentioned in the Memorandum of Association as well as in the Article of Association. The petitioner company states that it has been active all along since the date of incorporation.

3. It has been alleged that very recently, the ROC, Shillong, without following the prescription of law laid down under Section 560 of the Companies Act, 1956 (in short, Act of 1956), struck off the name of the company from the Registrar of Companies. In that connection, it has been submitted that Section 560 of the Act of 1956 requires that before striking off the name of any company, it is mandatory on the part of ROC to make a pre-decisional enquiry

even when the annual return and audited balance sheet of the Company are not filed with the authority concerned by the company in time.

4. Unfortunately, all those provisions were given a go by the concerned authority, same being the ROC, Shillong, when it took the decision to strike off the name of the company from the Registrar of Companies. It has been stated that the petitioner came to know about the striking off of the name of the company only in 2016 when the petitioner visited the portal of Ministry of Company Affairs (in short, MCA). In view of above, the petitioner has approached this Tribunal by way present petition seeking the reliefs aforementioned.

5. I have heard Mr. Narayan Sharma, Practising Company Secretary, appearing for the petitioner having regard to the averments made in the petition and find it necessary to direct the petitioner to serve notice of this proceeding on the ROC requiring him to reply to the allegations made in the petition.

6. List this matter on 28.04.2017.

7. The petitioner is directed to take steps in the matter of service of notice to the ROC, North Eastern Region, Shillong within a period of two days from today. Needless to say that such notice must accompany copy of the petition and all other connected documents.

8. It is made clear that the question of maintainability of the proceeding on the point of limitation shall remain open.

9. Registry is directed to furnish a copy of this order to the ROC, North Eastern Region, Shillong immediately for information and necessary action".

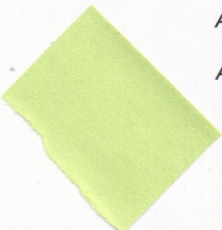
4. Mr. Chandan Kumar, ROC, Shillong submitted affidavit/reply stating that that the Petitioner Company did not file the annual returns after financial year ending 31st March, 2007 and it continued to do so till date. He further submits that such inaction on the part of the petitioner in complying with the mandatory requirement of law is naturally led the authorities to presume that the company is not in business and accordingly the name of the company was struck off by considering it to be a non-functioning company. The relevant part of the report is reproduced below:

"1. That averments made by the petitioner in para 1 in the petition are matter of fact and record, and except for what is specifically admitted everything is denied and disputed however, petitioner may be put to the strict proof thereof.

2. That with respect to averments made in para II and III it is humbly 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 the 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 18.05.2012 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.

3. That with respect to the averments made in IV, except for what are matter of facts and record everything is disputed and denied. Your respondent humbly submits that subject company was struck off in due compliance of Section 560 of the Companies Act, 1956 after issuance of notices dated 04.11.2011, 05.12.2011 and 12.01.2012. As the company was not carrying and has not filed its statutory returns since after Financial Year ending 31st March 2006 and your petitioner has specifically admitted in sub-para (f) of para IV that the subject company has failed to file requisite statutory returns for the period 2006-07 onwards and thus admitted default in compliance of provisions of section 159 of Companies Act 1956 and Section 220 of the Companies Act, 1956 and Section 92 of Companies Act, 2013 and Section 137 of the Companies Act, 2013.



4. That the averments made in sub-para g and h of para IV are not plausible as family exigencies and commercial hardships may not be a jurisdiction for non compliance of the statutory provisions of the companies act which we made punishable under the provisions of Companies Act. Further notices U/s 560 were issued to the company and the same is enclosed herewith and collectively marked as Annexure "A".

5. Report of the ROC reveals that there was no irregularity on the part of ROC in striking off of the name of the company from the register of the companies. However, in the facts and circumstances of the present case, ROC was not averse to the restoration of the company aforesaid, however, subject to fulfilment of certain conditions which are incorporated in the report of the ROC.

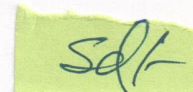
6. Considering the submission, advanced by ROC as well as the Company Secretary having regard to the averments made in the report of the ROC, I find it necessary to allow the restoration of the company to the file/Register of Companies, however, subject to fulfilment of following conditions:

"(i) The company shall comply with all statutory provisions of Companies Act, 2013 and file its statutory returns as per the Law within 30 days from the date of this order.

(ii) Company will not change its existing shareholders and management for a minimum period of 2 years from the date of order, however, further shares can be issued to the existing shareholders only and to the legal heirs in case of their death in accordance with law depending on the requirement of fund.

(iii) The company is further directed to pay the restoration cost of Rs. **15,000/-** payable to the Ministry of Corporate Affairs, Govt of India.

7. With the aforesaid directions, the petition is allowed and disposed of.



Member (Judicial)

National Company Law Tribunal
Guwahati Bench:Guwahati.

Samir