

NATIONAL COMPANY LAW TRIBUNAL  
GUWAHATI BENCH AT GUWAHATI

**CP NO.21/252(3)/GB/2017**

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

**In the matter of:**

Sri Arnab Kumar Sarma & Another ... Petitioners  
-versus-  
The Registrar of Companies ... Respondent

**Order delivered on : 22.11.2017**

**Coram:**

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

For the Petitioners : Mr. Manash Das,

For the respondent : None appears

**ORDER**

1. This application under Section 252(3) of the Companies Act, 2013 read with Section 87A of the National Company Law Tribunal Rules, 2016 by the petitioners seeking following reliefs :-

- (1) For setting aside the order of strike off passed by the respondent Registrar of Companies (ROC) and restore the name of the Company "Jayshreeg Developments Pvt. Ltd" to the Register of Companies as per the Provisions of Section 252(3) of the Companies Act, 2013.
- (2) Such further and/or other order or orders as be passed and/or direction or directions be given as this Hon'ble Tribunal may deem fit and proper".

2. In that connection, I have heard Mr. M. Das, learned counsel appearing for the petitioners,

This Court on receipt of the application, passed the following order on 27.10.2017 :-

"Mr. S. Bharali, learned Advocate submits that in terms of Section 252(3) of the Companies Act, 2013, the applicants/petitioners have already sent notice to the respondent by registered post with A/D. In that connection, I have perused the office note dated 20.10.2017, from which it appears that the application has been filed in accordance with the prescription of law and the Rules framed thereunder.

Accordingly, this application is admitted.

List this matter on 22.11.2017 for orders.

The applicants/petitioners are directed to furnish copies of the application along with the connected documents to the respondent within 5 days from today. On receipt of the copies of the application, the respondent may file reply to the application, if so advised, within 7 days therefrom. The applicants/petitioners may file rejoinder, if any, within a period of 3 days therefrom supplying simultaneously copies thereof to the respondent."

In the terms of the aforesaid order, the ROC, Shillong has submitted its report. The same is reproduced below :-

"I, Shri Chandan Kumar, S/O Binod Kumar Nutan, by provection, 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 :

- i. That averments made by the petitioner in para 1, 2 and 3 are submissions of the petitioner and a matter of facts and records and the petitioner may be put to strict proof thereof.
- ii. That with respect to averment made by the petitioner in para 4, except for what is matter of facts and records everything is disputed and denied.
- iii. That averments made in sub-para I, ii, iii and iv of para 5 are matter of facts and records and the petitioner may be put to strict proof thereof.
- iv. That with respect to averment made in sub-para v of para 5, your respondent humbly submits that family exigency cannot be an excuse for not complying with the statutory requirements, especially so when requirements under other statutes like the Income Tax Act etc. have been complied with and the business of the company had been regularly carried on without any interruption as accepted by the company itself in sub-para vi of para 5 of the petition.



- v. That averment made in sub-para vi of para 5 are matter of records of the company and the petitioner may be put to strict proof thereof.
- vi. That with regard to averment made in sub-para vii of para 5, your respondent humbly submits that the subject company was struck off in due compliance of section 248 of the Companies Act, 2013, and due notice had been issued to the company and its directors, stating therein the reasons and intentions of the Registrar of Companies to remove the name of the company from the Registrar of companies and allowing the subject company sufficient time to make its representation within the time as prescribed under the provisions of the Act.
- vii. That averments made in sub-para viii of para 5 are provisions of the relevant sections of the Companies Act, 2013.
- viii. That averment made in sub-para ix (wrongly numbered in the petition as viii) are matter of facts of the company and except for what is specifically admitted, everything is disputed and denied.
- ix. That with respect to averment made in para 6 and 7, 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 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.
- x. That with respect to the averments made in para 8 and 9, except for what are matter of facts and record everything is disputed and denied and the petitioner may be put to strict proof thereof.
- xi. That averment made in para 12 is prayer of the petitioner in the instant matter and the Tribunal may consider accordingly on merits."

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 under Section 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.5,00,000/- (Rupees Five Lakhs only) they may have to pay registration fees and also to serve as a deterrent for the companies which are negligent in compliance with the provisions of Companies Act.
- iii. Such order/directions as the Hon'ble Tribunal may deem fit and proper."

3. From the report, it appears that the allegation of the Petitioners-Company was struck off from the Registrar of Companies maintained by the ROC is not based on facts. However, having regard to the submissions made by the learned counsel for the respondent-ROC, I have allowed the present application with following conditions :-

- (a) The petitioners are directed to comply all statutory provision of the Companies Act, 2013 and file its pending statutory returns as per the law prescribed within 30 days from today.
- (b) The petitioners are further directed to pay restoration cost of Rs.10,000/- (Rupees Ten Thousand only) payable to the Ministry of Corporate Affairs, Government of India.
- (c) The petitioners shall file affidavit in due course affirming the directions are complied with.

4. When the aforesaid conditions are complied with, the respondent will take consequent steps for restoration of M/S Jayashreeg Developers Pvt. Ltd.
5. With the aforesaid direction, this petition stands allowed.

Sd/-

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

TDR