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**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

Co. Appeal No. 22/252/NCLT/AHM/2017

Coram:

**Present: Hon'ble Mr. BIKKI RAVEENDRA BABU
MEMBER JUDICIAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 13.09.2017**

Name of the Company: Sai Gajanan Multitrade Pvt. Ltd.
V/s.
Registrar of Companies, Gujarat.

Section of the Companies Act: Section 252 of the Companies Act, 2013

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
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1.

2.

ORDER

None present for Appellant. None present for ROC, Gujarat.

Order pronounced in open Court. Vide Separate Sheets.


BIKKI RAVEENDRA BABU
MEMBER JUDICIAL
13.9.17

Dated this the 13th day of September, 2017.

**BEFORE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH**

Co. Appeal No. 22/252/NCLT/AHM/2017

In the matter of:

Sai Gajanan Multitrade Private Ltd.,
Registered Office at
B/10, Bhakti Vedant Park,
Nr. Friends Class,
Honey Park Road,
Adajan,
Surat-395009

: Appellant.

Versus

Office of Registrar of Companies
Gujarat, Dadra & Nagar Haveli
ROC Bhawan,
Opp: Rupal Park,
Naranpura,
Ahmedabad-380013

: Respondent.

Order delivered on 13th September, 2017.

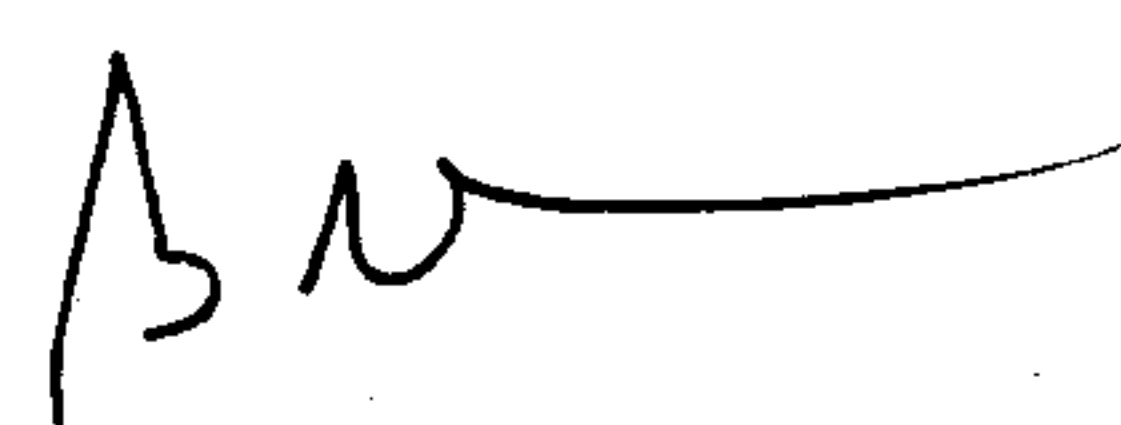
Coram: Hon'ble Sri Bikki Raveendra Babu, Member (J).

Appearance:

Mr. Dhiren Dave, learned PCS for the Appellant.
None present for Registrar of Companies.

ORDER

1. The Board of Directors of Sai Gajanan Multitrade Private Ltd., in its Meeting held on 14th August, 2017 resolved to file an Appeal for restoration of the Company under Section 252 (3) of the



Companies Act, 2013, and further authorised Mr. Niranjn Vasantlal Dalal, Director of the Company to sign Applications, Affidavits etc.

2. The facts, that are necessary for disposal of this Appeal, are as follows;

2.1. The Appellant Company was incorporated on 8th November, 2010. Appellant Company has been doing business since incorporation and has been active Company through out. However, due to change in Accountant and other administrative staff of the Company some time in 2014 necessary Returns were not filed for the last three years. On realisation of the same Company *suo motu* uploaded Annual Returns and Financial Statements for the last four years including for the financial year 2016-17 as detailed below;

Year	Form No.	Particulars	SRN	Normal Fee	Additional Fees
2014	20B	Annual Return	G47245097	300	3800
2014	23AC/ACA	Financial Statements	G47245873	300	3600
2015	MGT-7	Annual Return	G47257217	300	3600
2015	AOC-4	Financial Statements	G47256946	300	3600
2016	MGT-7	Annual Return	G47258835	300	3600
2016	AOC-4	Financial Statements	G47257340	300	3600
2017	MGT-7	Annual Return	G47276746	300	-
2017	AOC-4	Financial Statements	G47276084	300	-

2.2. Registrar of Companies, Gujarat, sent Form STK-7 intimating that the Company's name has been struck off with effect from 21st June, 2017 under sub-section (5) of Section 248 of the Companies Act, 2013. The same is also published in the Official Gazette of India on 8th July, 2017.

2.3. It is further stated in the Appeal that the Company has imported goods from USA which have already arrived at Nhava Sheva Port, Mumbai on 13.8.2017 but due to linking of Import-Export Code

(IEC) with CIN of the Company, while the Company applied for Advance License on DGFT site, error was shown that IEC is invalid. It is also stated that the Company has to clear its goods from Port within 14 days of the arrival of the goods otherwise it will incur huge Demurrage Charges.

2.4. Appellant further stated that Notices dated 6.3.2017, 9.3.2017 and 25.4.2017 stated to have been issued by the Registrar of Companies have not been received by the Company.

3. On this Appeal Notice was ordered to the Registrar of Companies, Gujarat. Registrar of Companies filed representation stating that as per the provisions of Section 248(1) of the Companies Act, 2013 he has got powers to initiate action against the Company in case the Company fail to commence its business within one year of its incorporation or the Company is not carrying on any business or operation for a period of two years immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant company under Section 455.

3.1. Registrar of Companies also stated that the Company has failed to file its statutory returns in time and therefore the Registrar of Companies initiated action under Section 248(1) of the Companies Act, and it is a fit case for striking the name of the Company on *suo motu* basis. Registrar of Companies stated that he issued final notice under Section 248(5) of the Act on 21.6.2017 and the same was published in the Gazette of India. ROC also stated that the Company was issued notices for non-filing of statutory Returns in time on 6.3.2017, 9.3.2017 and 25.4.2017 and the copies of said notices were published in the Website of the Ministry, but the Company has not responded to such notices. The Registrar of Companies stated that he has no objection if this Tribunal pass an appropriate order for restoring the name of the Company under Section 252 (3) of the Act subject to the Company filing all the overdue statutory Returns which are Balance Sheet and Annual Returns for the years which have not

been filed and other event based documents, if any, with fees and additional fees as required under the Companies Act and subject to the publication of notice in two leading newspapers circulating in the District and Official Gazette of India in regard to the restoration of the name of the Company in the Register of Companies maintained by the Registrar of Companies.

4. Sub-section (3) of Section 252, which came into force with effect from 26.12.2016, provides that if a Company or any Member or Creditor or Workman feels aggrieved by the striking off the name of the Company by the ROC, can file an Application within 20 years from the publication in the Official Gazette of the Notice under sub-section (5) of Section 248 of the Act.

5. In the case on hand, the Company was struck off under Section 248(1) of the Companies Act for non-filing of statutory Returns within time, inspite of notices and the same was published in the Official Gazette on 8th July, 2017 but not on the basis of resolution passed by company. Therefore, this Appeal filed on 22nd August, 2017 by the company is within limitation, and maintainable.

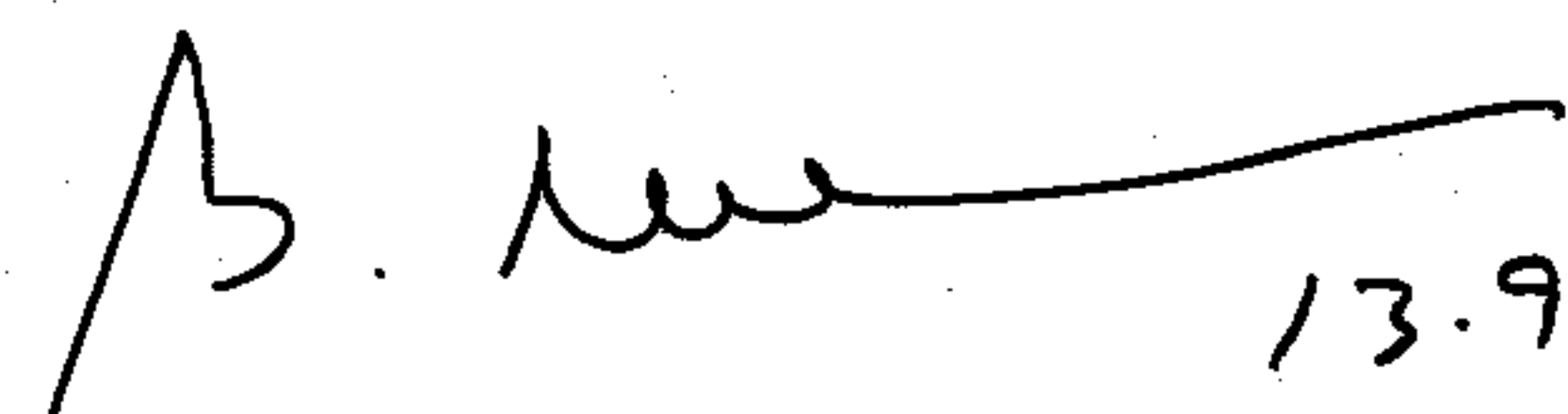
6. This Appeal is filed by the Company through one of its Directors who is duly authorised. Sub-section (3) of Section 252 enables the Company to file Application to restore the Company in the Register of Companies. However, the Company must be able to show that it is carrying on business or in operation or otherwise and it is just that the name of the Company shall be restored to the Register of Companies. In the case on hand, from the Annexure "D" to the Appeal, it is clear that the Company has already filed the Annual Returns having noticed the defect of not filing in time. The Company also filed Invoice issued by Sunwest International LLC to the Appellant Company transshipping certain goods. Appellant also filed Certificate of Origin which shows that Sunwest International LLC transported certain goods to the Appellant Company through a Vessel, by name 'Maersk Columbus' in a container to the Port, Nhava Sheva, Mumbai. The material was shipped on Board on 29th June,

2017. It is stated that the goods received the destination on 13th August, 2017. Appellant also stated that it has to take delivery of the goods within 14 days failing which it has to pay huge demurrage charges. The above said documents filed by the Appellant clearly show that the Appellant is carrying on business and it has to take delivery of goods from the Nhava Sheva Port, Mumbai, and for which purpose the restoration of the Company is necessary. The Registrar of Companies also in his representation reported 'No Objection' to restore the Company subject to the filing of statutory Returns which were not filed, and subject to publication for restoration of the Company in the newspapers.

7. Considering the above said aspects, it is held that the Appellant Company is carrying on business and it is in operation and it is also just to restore the name of the Company in the Register of Companies. Hence, the Registrar of Companies, Gujarat, is directed to restore the name of M/s. Sai Gajanan Multitrade Private Limited in the Register of Companies maintained by him. The Appellant shall file the statutory Returns, if not filed already, within two weeks as per the provisions of the Companies Act, 2013. The Appellant Company shall also publish in the "Indian Express" circulating in Surat, Gujarat stating that the Company has been restored in the Register of Companies after it is restored by Registrar of Companies.

8. The Appeal is disposed of accordingly.

Signature:



13.9.17

Sri Bikki Raveendra Babu, Member (J).