

ATTENDANCE-CUM-ORDER SHEET OF HEARING

NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCHC.P.No. 08/252/G~~8~~/2017

Ram Paresh Mahto

- Petitioner

-Versus-

Registrar of Companies
North Eastern Region, Shillong

- Respondent

PRESENT

Hon'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
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ORDER

1. Heard Mr. Biman Debnath, practising Company Secretary appearing for the petitioner. The Registrar of Companies, N.E.Region is represented by Mr. Chandan Kumar, ROC, N.E.Region , Shillong.

2. This application has been filed under Section 252 of the Companies Act, 2013 seeking restoration of the petitioner's company to the file and/or to the Register of Companies, Shillong alleging that the name of the company was 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 3rd April, 2017. For ready reference, the relevant part of the order is reproduced below:

"This petition has been filed under Section 252 of the Companies Act, 2013 seeking following reliefs :

- "a. The name of the Company namely M/s Shree Entrade Private Limited be restored to the file and/or to the register of the Registrar of Companies, Shillong.*
- b. The respondent be directed to rectify the master date by modifying the status from "Strike Off to Active" within the specific time as this Hon'ble Tribunal may deem fit and proper.*
- c. An order be passed directing the respondent to place the name of the Company in the same position as if the name of the Company had not been struck off.*
- d. Injunction restraining the respondent whether by himself or by his servants or agents or assigns or otherwise howsoever from taking any step or further steps in terms of the Gazette of India Notification in any manner whatsoever.*
- e. Ad-interim order in terms of prayers above.*
- f. Such further order or orders be passed and/or direction or directions be given as to this Hon'ble Tribunal may seem fit and proper."*

It has been alleged that 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 register of Companies. It has been submitted that under Section 560 of the Act of 1956, 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 balance sheet and annual returns are not filed by the company in time.

Unfortunately, all those provisions were given a go by the concerned authority when it took the decision to strike off the name of the company from the register of 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 he had visited the office of the ROC for filing the balance sheets and annual returns for the period starting from 2006.

In view of the above and also on hearing Mr B. Debnath, PCS, I find it necessary to direct the petitioner to serve notice on the ROC requiring him to reply to the allegations made in this proceeding.

List this matter on 28.04.2017.

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.

It is made clear that the question of maintainability of this proceedings on the point of Limitation shall remain open.

Registry is directed to furnish a copy of this order to the ROC, North Eastern Region, Shillong immediately”.

4. Mr. Barman, Practising Company Secretary submits that the petitioner No.1 company was incorporated on 22.02.2002 with authorised capital of Rs. 1(one) lakh divided in to 100 equity shares of Rs. 100 each. However, paid up capital of the company was Rs. 1(one) lakh divided into 1000 equity shares of Rs. 100 each. After its incorporation, the company starts doing the business of buying , selling, exchanging, importing, exporting, manufacturing and dealing whole sale and in retail, in men's women's and children's clothing and wearing apparel of every kind, nature and description in the State of Assam.
5. However, the petitioner company came to know about its name being struck off from the Register of the Companies only when the representative of the company went to file statutory documents as per requirement of the Act and thereafter Director of the company visited the ROC, Shillong requesting him to change the status of the company from "Strike Off" to "Active" so that statutory compliance could be made as per requirement of law. He also submits that under Section 248, a pre-decisional inquiry is mandatory even when statutory returns are not filed by the company which was, however, not done in the case in hand.
6. In terms of the order rendered by this Tribunal on 3rd April, 2017, Mr. Chandan Kumar, ROC, Shillong, has filed reply affidavit on 11.04.2017 stating as follows: -

the petition. In compliance of Section 560 of Companies Act, 1956 notices were issued to the company U/s. 560(1) on 06.12.2010, 11.01.2011 and 07.03.2011 and on non-receipt of reply from the company the subject company was finally struck off and dissolved on 24.06.2011 by sending a notice for the gazette publication to the Manager, Government of India, Faridabad. Copy of the aforesaid notices are enclosed and collectively marked as Annexure 'A'.

- e) That the averments made in sub-para k, l, m, n of para 3(IV) are false and misleading and the respondent respectfully submits that the Ministry of Corporate Affairs, Government of India has made a wide publication in respect of e-filing of all statutory returns by companies in the ministry's website w.e.f 26.07.2006 and by opening front offices all over North Eastern Region and facilitation centers of MCA from 2006 till 2010. So the plea taken by the subject company that because of formalities statutory returns could not be filed, is after thought and to mislead this Hon'ble Tribunal".*

7. As it appears from the report, the ROC denied the allegations made in the petition stating that the striking off of the name of the company in question from the Register of the Companies was done in accordance with the prescription of law.

8. However, the report of ROC , Shillong, further reveals that the authority concerned is not averse to the restoration of the company aforesaid to the file and/or to the Register of Companies subject to fulfilment of certain conditions which are as follows: -

"(i) The company shall comply with all statutory requirements under the Companies Act, 2013 and shall file its statutory returns as per the Law prescribed within 30 days of the restoration order being passed.

(ii) Company will not change its existing shareholders and management for a minimum period of 5 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,

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"(i) The company shall comply with all statutory requirements under the Companies Act, 2013 and shall file its statutory returns as per the Law prescribed within 30 days of the restoration order being passed.

(ii) Company will not change its existing shareholders and management for a minimum period of 5 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,

(iii) To pay the restoration cost of not less than Rs. 25,000/- payable to the Ministry of Corporate Affairs, Govt of India.

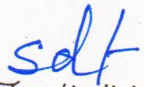
9. Considering the submissions, advanced by ROC as well as the Company Secretary having regard to the averments made in the report of the ROC, I find it necessary to allow the restoration of the company to the file/Register of Companies, however, subject to fulfilment of following conditions:

“(i) The company is to 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) The 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 by the company.

(iii) The company is further directed to pay the restoration cost of Rs. 7,000/- payable to the Ministry of Corporate Affairs, Govt of India.

10. With the aforesaid directions, the petition is allowed and disposed off.


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

Samir