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**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

Co. Appeal No. 27/252/NCLT/AHM/2017

Coram: **Hon'ble Mr. BIKKI RAVEENDRA BABU, MEMBER JUDICIAL
Hon'ble Ms. MANORAMA KUMARI, MEMBER JUDICIAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 27.10.2017**

Name of the Company: Amit Gupta
(Shreenath Agrico Pvt Ltd)
V/s.
Registrar of Companies, Gwalior

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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ORDER

None present for Appellant. None present for ROC.

Order pronounced in Open Court. Vide separate sheets.

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**MANORAMA KUMARI
MEMBER JUDICIAL**

Dated this the 27th day of October, 2017.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH**

Co. APPEAL No.27/NCLT/AHM/2017

In the matter of:-

Shreenath Agrico Private Limited
Through Amit Gupta, Director,
Regd. Office 501, Alankar Point,
A. B. Road, Geeta Bhawan Square,
Indore – 452001 (M.P.)

...

Appellant

Versus

The Registrar of Companies,
Madhya Pradesh, Gwalior,
III Floor, "A" Block,
Sanjay Complex,
Jayendraganj,
Gwalior – 474 009 (M.P.)

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Respondent

Order delivered on 27th October, 2017

Coram: Hon'ble Ms. Manorama Kumari, Member (J)

Appearance:

Mr. Vijayesh Atre, Advocate for the Appellant.

None present for the ROC.

ORDER

1. This appeal under Section 252(3) of the Companies Act, 2013 is filed by M/s Shreenath Agrico Private Limited, through one of its Directors with a prayer to restore the name of the company, namely, M/s Shreenath Agrico Private Limited, in the Register of Companies maintained by the office of the Respondent.

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2. The facts, in brief, which led to the filing of the appeal, are that :-

3. M/s Shreenath Agrico Private Limited ("the Company") was incorporated at Gwalior on the 9th August, 2008. The company is having CIN No.U51220MP2008PTC020898 and its registered office is situated at 501, Alankar Point, A.B. Road, Geeta Bhawan Square, Indore - 452001 (M.P.).

4. The issued, subscribed and paid up share capital of the Company, is Rs.1,00,000/- divided into 10,000 equity shares of Rs.10/- each fully paid up, as per the latest audited balance sheet of the Company as on 31.03.2016.

5. The main objects set forth in the Memorandum of Association of the Company are as follows :-

(1) To carry on business of dealing in goods, commodities, agricultural articles, food processing, warehousing, storekeeping, godown keeping, transportation, trafficking, handling, loading, unloading, cleaning, forwarding, dumping, preserving of goods, commodity, articles or things called by any names and to issue, for the same receipt, certificate letter of possession to the person who has warehoused the goods, commodity, articles with the Company and to provide cold storage and/or any other special storage facility.

(2) To purchase, acquire, take on lease, rent, hire and to equip, improve, work, develop, administer, manage, maintain, enlarge and conveniences of all kinds, which expression includes among other things canteens,

warehouses, stores, buildings, offices and/or recreation and to pay or contribute the expenses of acquiring any such works and conveniences, and to act as warehousemen and wharfagers.”

6. From the perusal of the audited accounts for the financial year ended on 31.03.2016, it is found that the Company was continuing to carry on the business and the Company was very much in operation.

7. The appellant has submitted that the Company received a notice under Section 248(1) of the Companies Act, 2013 dated 10th March, 2017 from the Respondent, wherein the Respondent had indicated about its intention to remove the name of the company from the Register of Companies and the appellant Company was asked to send its representation along with copies of relevant documents within thirty days of receipt of the notice.

8. On receipt of the notice, the appellant Company vide letter dated 31st March, 2017 replied to the notice dated 10th March, 2017 clarifying that the Company is operational and is a going concern and not a dormant company. The appellant Company also stated in the said reply that its Directors are continuing the business but due to some unavoidable reasons financial statements and annual returns of the Company for the last three preceding years could not be filed on time. The appellant Company assured

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that the documents would be filed at the earliest and requested the Respondent not to remove the name of the Company from the Register of Companies.

9. Thereafter, in the month of July, 2017, when the appellant Company approached the portal of the Ministry of Corporate Affairs for the purpose of filing its pending documents as per the provisions of the Companies Act, 2013, it came to be know that its name has been struck off.

10. On receipt of notice of this Tribunal, the Respondent has filed its representation and stated that the appellant Company was incorporated on 9th July, 2008 as a company limited by shares. It is also stated by the Respondent that the name was struck off on 02.06.2017 and the application for restoration of name of the Company under Section 252(3) was filed on 04.08.2017, which is within the time limit. The Respondent has further stated that, as per the records of the office of the Respondent, there were two Directors of the appellant Company and that both the Directors have been disqualified under Section 164(2) of the Companies Act, 2013 for non-filing of financial statements and annual returns for any continuous period of three financial years.

11. The Respondent has also stated that, as per the records of the office of the Respondent, the Company has not

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filed its Balance Sheets and Annual Returns for the financial year 2011-12 onwards. Therefore, the Respondent has struck off the name of the Company from the Register of Companies on suo motu basis on 02.06.2017.

12. While filing the reply in the instant appeal, the Respondent has stated that the Respondent has no objection if this Tribunal passes an appropriate order for restoring the name of the Company under the provisions of Section 252(3) of the Companies Act, subject to the Company filing all the overdue statutory returns, viz. balance sheets and annual returns for the years for which the same have not been filed and other event based documents, if any, with fees and additional fees as required under the Companies Act, 2013.

13. It is submitted by the appellant that the Company could not file its financial statements and annual returns with the Registrar of Companies as required under Sections 159 and 220 of the Companies Act, 1956 and also under Sections 92 and 137 of the Companies Act, 2013 since the year 2011-12. It is stated in the appeal that the Company could not file the documents due to some unavoidable reasons. However, the Company, being operational, would complete all the pending statutory filing immediately after restoration of the name of the Company in the Register of Companies.

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14. 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 of name of the Company by the ROC, such Company or Member or Creditor or Workman 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.

15. In the case on hand, the name of the Company was struck off under Section 248(1) of the Companies Act for non-filing of statutory returns within time in spite of notices and the same were published in the Official Gazette, but not on the basis of resolution passed by the Company. Therefore, this appeal filed on 4th August, 2017 by the Company is within the period of limitation and maintainable.


16. 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. The documents filed by the Appellant clearly

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show that the Company is carrying on business. 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.

17. Considering the above said aspects, it is held that the 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, Gwalior is directed to restore the name of **M/s Shreenath Agrico Private Limited** in the Register of Companies maintained by the office of the Registrar of Companies. 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 shall also publish in two leading newspapers - one in English and another in Hindi - circulating in Indore District (M.P.), stating that the Company has been restored in the Register of Companies after it is restored by the Registrar of Companies.

18. This appeal is disposed of accordingly.

Signature.....
Ms. Manorama Kumari, Member (J)

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