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NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

Co. Appeal No. 7/252/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 05.06.2017

Name of the Company: Registrar of Companies, Gujarat
V/s.
Aquarion Exim Ltd.

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>
1.	NAVIN PAHWA	ADV.	Respondent	Navin
2.				

ORDER

None present for Petitioner. Learned Advocate Mr. Navin Pahwa present for Respondent.

Order pronounced in open Court. Vide separate sheet.


BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

Dated this the 5th day of June, 2017.

Company Appeal No. 7/252/NCLT/AHM/2017

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

CORAM: SHRI BIKKI RAVEENDRA BABU, MEMBER JUDICIAL

Company Appeal No. 7/252/NCLT/AHM/2017

Order under section 252 of the Companies Act, 2013

In the matter of: **M/s. Aquarin Exim Limited**

Registrar of Companies, Ahmedabad Gujarat, ... Applicant

V/s.

M/s. Aquarin Exim Limited ... Respondent

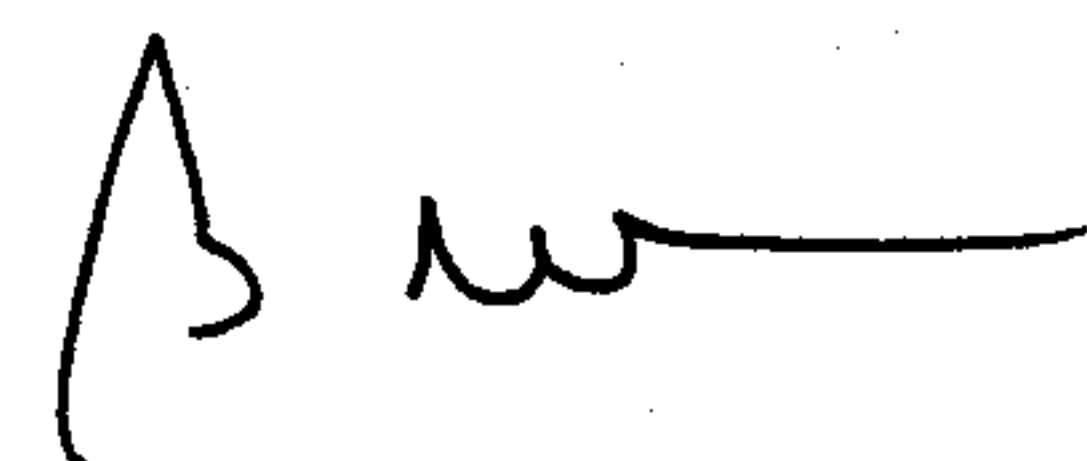
Appearance:

1. Mrs. Vipal B. Solanki, Company Prosecutor for Applicant.
2. Mr. Navin Pahwa, Advocate for Respondent.

FINAL ORDER

Pronounced on 05.06.2017

1. Registrar of Companies, Ahmedabad, Gujarat filed this appeal under section 252 of the companies Act, 2013 on 28.02.2017 seeking order to restore the name of M/s. Aquarin Exim Limited in the Registrar of Companies and to direct the company to file all pending statutory returns in the office of the petitioner.
2. The Facts in brief that lead to the filing of this Appeal are as follows:
 - a) The company was incorporated as Limited company on 29.01.1996 under the provisions of Companies Act, 1956. Its registered office is in Navrangpura, Ahmedabad.
 - b) It is stated that in compliance of CAV Judgement dated 27.08.2015 passed by Hon'ble High Court of Gujarat, in

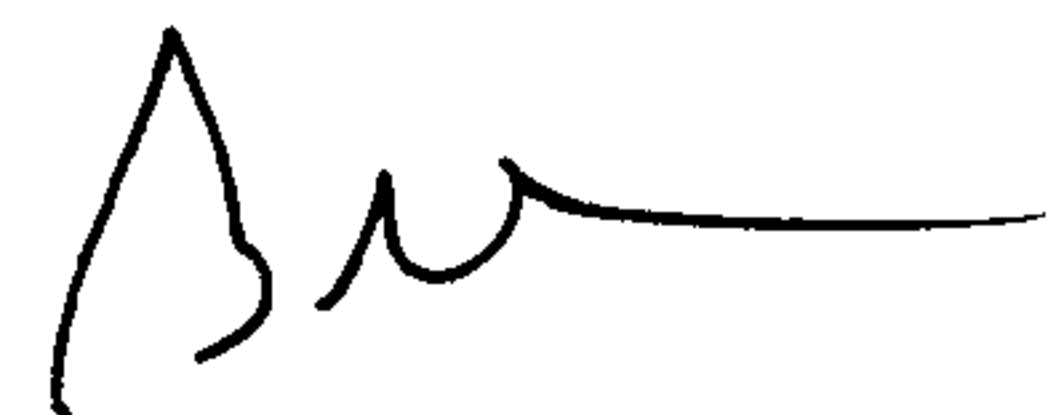


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COMA No. 403 to 412 of 2010, the amount due from the following six companies, which includes respondent company have to be recovered by the Liquidator of Alps BPO Services Limited:

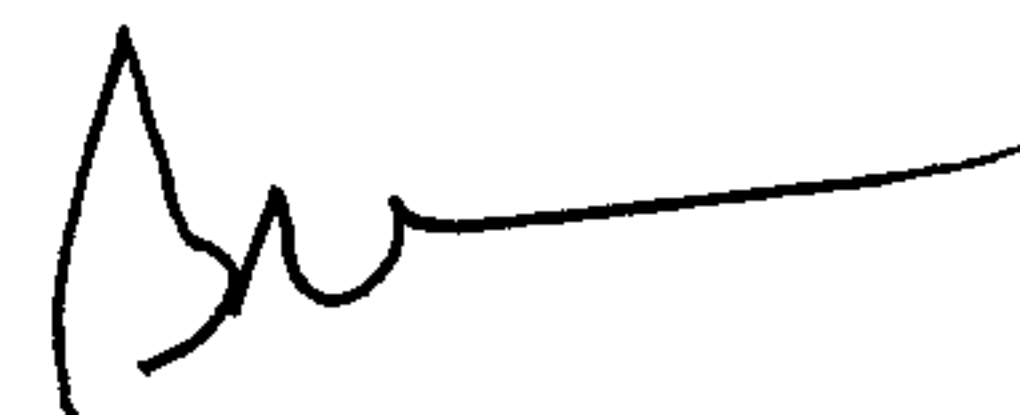
- I. Aquarin Exim Ltd.
- II. Monila Fintrade Private Ltd.
- III. Kajol Impex Ltd.
- IV. Trans Housing Finance Corp. Ltd.
- V. Tanaya Securities Ltd.
- VI. Trans Real Estate Private Ltd.

- c) It appears that Official Liquidator, High Court of Gujarat by his letter dated 03.02.2017 addressed to Registrar of Companies, Gujarat made a request to Registrar of Companies, Gujarat, to restore the name of the above said six companies after taking orders from NCLT. Thereupon Regional Director (NWR) requested the Registrar of Companies, Gujarat to file an application before this Tribunal under section 252 of the Act to restore the names of aforesaid six companies including the Respondent Company.
- d) It is stated that the name of the Respondent company was struck off from the Register of Companies on 13.07.2011.
- e) It is stated that section 252 of the Companies Act, 2013 came into force w.e.f 26.12.2016 and therefore, this Appeal filed under section 252 of the Companies Act, 2013 is well within limitation period.
- f) It is also stated that in view of section 465(2)(a) of the Companies Act, 2013 any order made under repealed enactment shall insofar as it is not inconsistent shall be deemed to have been passed under the corresponding provisions of the Companies Act, 2013.



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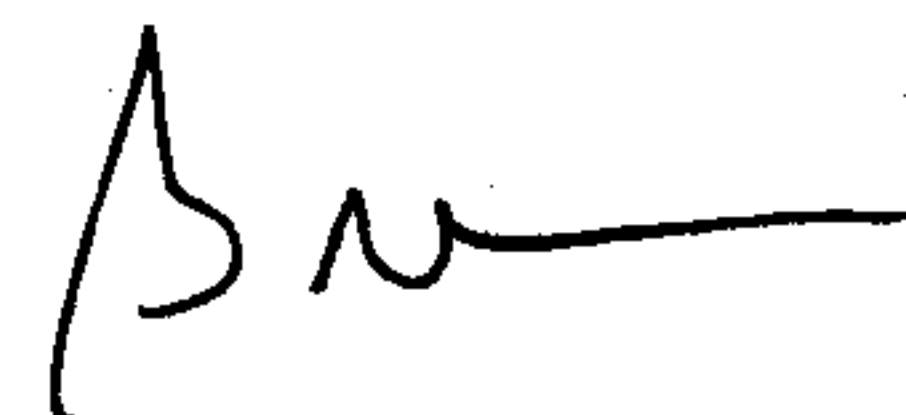
3. Respondent filed reply affidavit stating that the name of the respondent company came to be struck off from the Registrar of Companies on 13.07.2011 under section 560 of the Companies Act, 1956. It is further stated there was no enabling power under the Companies Act, 1956 authorizing the appellant to seek restoration of the name of the company. It is stated that Registrar of Companies, is entitled to file an appeal before this Tribunal seeking restoration of the name of the company within a period of three years from the date of passing of order dissolving the company under Section 248 on the ground that name of the company has been struck off from the Registrar of companies either inadvertently or on the basis of incorrect information furnished by the company or its directors. It is further stated that Section 465 (2) of the Companies Act, 2013 cannot be invoked in order to change the date of order for the purpose of bringing the Appeal within the limitation period.
4. In spite of granting two adjournments none appeared on behalf of the Registrar of Companies, Gujarat. Heard Learned Counsel for respondents. Perused the petition and reply.
5. The following are the points that need determination in this Appeal
 - I. Whether appeal is filed within the period of limitation.
 - II. Whether Registrar of Companies, Gujarat is entitled to file this petition
6. Point No. 1: Respondent company was struck off from Register of Companies, Gujarat on 13.07.2011 under section 560 of the Companies Act, 1956. This Appeal is filed on 28.02.2017. There is no enabling provision under section 560 of the Companies Act, 1956, which enables the Registrar of Companies, Gujarat to file an Appeal before this Tribunal for obtaining an order for restoring the name of the Respondent company in the Register of Companies. But Section 252 of Companies Act, 2013 which came into force w.e.f. 26.12.2016



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enabled Registrar of Companies, Gujarat to file an Appeal before this Tribunal seeking restoration of the name of the company that was ordered to be dissolved under section 248 of the companies Act, 2013, within a period of three years from the date of passing such orders on the ground that the name of the company has been struck off from the Register Of Companies either inadvertently or on the basis of incorrect information furnished by the company or its directors.

7. In the case on hand the order was passed under section 560 of the Companies Act, 1956 on 13.07.2011. In fact, as can be seen from MCA website Section 465 of the Companies Act, 2013 is not yet notified. Even by assuming that by virtue of section 465 (2)(a) of the companies Act, 2013 the order passed under section 560 of the Companies Act, 1956 is deemed to be an order under section 248 of the companies Act, 2013, which is a corresponding provision to section 560 of the companies Act, 1956, the date of passing of the order cannot be changed. The date of passing of the order can only be taken into consideration for the purpose of computing limitation provided under section 252 proviso second which enables the Registrar of Companies, Gujarat to file an Appeal for restoration of the name of the company. In that view of the matter the period of limitation for filing appeal by the Registrar of Companies, Gujarat commences from date of passing of the order i.e. 13.07.2011 even though it is treated that the order passed under Section 560 of old code is treated as order under Section 248 of the Act by virtue of 465(2)(a) of the Act. Therefore, this appeal is barred by limitation.
8. Point No. II: Second proviso to sub section (1) of section 252 of companies Act enables the Registrar of Companies, Gujarat to file an appeal only in cases where the name of the company has been struck off from the Register of Companies either inadvertently or on the basis of incorrect information furnished by the company or its directors.



9. In the case on hand the appeal is not filed on the ground that Registrar of Companies, Gujarat inadvertently struck off the name of the company from the register of companies or on the ground that the company or its directors furnished incorrect information. Therefore, the Registrar of Companies has not made out any ground as mentioned in second proviso to Sub Section 1 of Section 252 of the Companies Act, 2013.
10. However, an appeal can be filed before this Tribunal by company or any member or creditor or workman, if aggrieved, within 20 years from the date of publication of the order passed under Sub Section 5 of Section 248.
11. In view of the above the Appeal is dismissed. There is no order as to cost.


BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

Pronounced by me in open court
on 5th June 2017