

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

C.P. No. 231/252(3)/2017

Under section 252(3) of Companies Act, 2013

In the matter of
Mahabharat Builders & Developers Ltd.
....Applicant

Order delivered on: 20.07.2017

Coram:

Hon'ble Mr. B.S.V. Prakash Kumar, Member (Judicial)
Hon'ble Mr. V. Nallasenapathy, Member (Technical)

For the Petitioner : Deepak P. Kadam, Professional

Per B. S. V. Prakash Kumar, Member (J)

ORDER

It is a Company Petition filed under Section 252(3) of the Companies Act, 2013 for restoration of the Company on the file of Registrar of Companies (RoC), Maharashtra, stating that due to recession, the company became dysfunctional therefore, an application was filed with RoC under Section 560 of the Companies Act, 1956 for striking off the name of the Company from the Register of Companies, in pursuance thereof, the company name has been struck off from the Register of Companies by an Order ('Exhibit-B' in page No.: 39) dated 02.01.2015 and whereas now owing to favourable market conditions, since the management is interested to start a new project for housing development, the directors and shareholders of the company have come together and decided to carry on business mentioned in the objective of the company, henceforth, sought for the restoration of this company under section 252(3) of the Companies Act, 2013.

2. On perusal of this Application, it appears that this Application has been filed in the name of Managing Director who is no more in existence after the company

has been struck off from the Register of Companies. Even if this Application is otherwise taken into consideration, by looking at Section 252(3), this provision could be invoked only when the company is struck off from the Register of Companies either inadvertently or on misinformation furnished by the company or its Directors or if any application comes from any member/workman with a grievance saying that this company was struck off while carrying on business. But whereas by looking at the Application filed by the Company, it is on face appears that company has been struck off on the application given by the company, now it is not the case of the Applicant it was struck off inadvertently or on misinformation given by the company or its Director, it is also not the case of the Applicant that this company is still carrying business, what now the Applicant says is since market conditions are favourable, it wants to restore the company, which is not permissible u/s 252(3) for it was not inadvertently or on incorrect information struck off. It is also not the case the company still carrying its business.

3. The Counsel appearing on behalf of the Applicant has relied upon an Order dated 19.04.2017, *between the PKD Securities Ltd. Vs. Registrar of Companies, Shillong*, passed by the Guwahati Bench, NCLT stating that since the aforesaid Bench has passed an Order under the same Section of law, this Company Petition is also to be allowed on the analogy applied in the aforesaid case.

4. On perusal of the Order passed by our learned brother at Guwahati, it is noticed that the company had been still carrying business, but whereas, in the present case, since Applicant itself saying that the company was closed due to recession, the order passed by the Guwahati Bench is not applicable to the present case.

5. Therefore, for the reasons stated above, this Application is hereby dismissed as misconceived.

Sd/-

V. NALLASENAPATHY
Member (Technical)

Sd/-

B. S.V. PRAKASH KUMAR
Member (Judicial)