BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

CP No.: 770/252/NCLT/MB/MAH/2017

Under section 252 of the Companies Act, 2013

In the matter of

M/s. Ansari Brothers Infra Private Limited, 342, Hindustan Chambers, Vithal Sadan, 2nd Floor, Kalbadevi Road, Mumbai - 400002.

....Petitioner/Applicant Company

v.

Registrar of Companies, Mumbai

..... Respondent

Order delivered on: 09.02.2018

Coram :

Hon'ble Bhaskara Pantula Mohan, Member (J)

For the Petitioner :

Mr. Vipin Shrimali, Advocate i/b. CS H. Choudhary & Associates – Authorised Representative for the Petitioner/Applicant.

For the Respondent :

Mr. Neelambuj – Advocate for the RoC.

Per : Bhaskara Pantula Mohan, Member (J)

ORDER

1. This present petition/application has been filed under Section 252 of the Companies Act, 2013 (hereinafter as **Act**) by "M/s. Ansari Brothers Infra Private Limited" (hereinafter as **Petitioner Company**) to restore its name in the Register maintained by the Registrar of Companies, Mumbai (hereinafter as **RoC**).

2. The Petitioner Company was incorporated with the RoC, Mumbai on 08.12.2010 having CIN : U70102MH2010PTC210753.

3. The Petitioner Company is engaged mainly in the business of development and construction.

4. The name of the Petitioner Company was struck off from the Register on account of the reasons that, the Company is not carrying on any business and that there was no business operation for a period of last two financial years and have not made any application within such period for obtaining the status of Dormant Company under S. 455 of the Act. Hence, the RoC has published a public notice for Striking off and Dissolution of Company i.e. STK – 7 dated 10.07.2017.

Submissions from the Petitioners:

5. The Learned Advocate for the Petitioners submitted that, the Petitioner Company is a running concern and has assets as well as corresponding liabilities including the statutory dues. Further, the Company has not made any application for obtaining the status of Dormant Company under S. 455 of the Act. Further that, the Petitioner Company had never in the past, on its own, moved any application for Strike-off under S. 248 (2) of the Companies Act, 2013.

6. It is submitted that, the Petitioner Company had not filed, the Annual Returns for the period from F. Y. 2013-14 to 2016-17 and Balance Sheets for the period from F. Y. 2010-11 to 2016-17, with the RoC.

7. It is further submitted that, the Petitioner Company accepts that, inadvertently the Company could not file the required documents with the RoC. Further, the non-filing is neither wilful nor intentional. It is due to lack of technical expertise with the Company to file the required documents with the RoC through e-Filing hence, it couldn't comply with the statutory requirements with the RoC.

8. The Learned Advocate for the Petitioner Company further submitted that, the Petitioner Company now has all the remaining documents ready and prepared and is willing to file the same before the RoC, if so permitted. Further the Company is willing to file any other necessary document which are required by the RoC.

Submissions from the Respondent/RoC:

9. The RoC has forwarded its report dated 08.02.2018 inter alia stating therein that, the RoC has issued the notice in Form STK – 1 on 22.03.2017 to the Company on the ground that, the Company is not carrying on any business and that there was no business operation for a period of last two financial years and have not made any application within such period for obtaining the status of Dormant Company under S. 455 of the Act. Further, the said notice returned back to the RoC by postal department remarking on the envelope as "Left". Further, the RoC has published the name of Company on its official website vide STK – 5 on 28.04.2017. But inspite of two notices there is no representation from the side of the Petitioner Company. Hence,

consequentially the RoC has issued public notice i.e. STK – 7 dated 10.07.2017 intimating that the name of Company is been struck-off from the Register of RoC.

10. It is also submitted that, the Petitioner Company has not filed the Annual Returns and Balance Sheets with the RoC for the above mentioned period. And as the Statutory Returns were not filed for the said period, the RoC came to conclusion that, the Petitioner Company has ceased to its business. And consequentially the name has been struck-off from the Register of RoC.

11. However, it is further submitted in the said report that the RoC has no objection to restore the name of the Petitioner Company, if the Petitioner Company is willing to comply with the provisions of the Act, subject to imposition of Cost.

Findings:

12. That, the facts and circumstances of the case have enlightened that the relevant documents which are to be filed, are ready with the Company and the Company is willing to file the same, if so permitted. Further that, the accounts of the Company were audited and the audited accounts have been approved within prescribed time. Further that, it is not a case that the Company is not actively engage in the business or not stopped business activities; as apprehended by the Learned RoC. The ground for strike-off i.e. "no business operations for a period of last two financial years" is not correct.

13. Moreover, by going through the pleadings on record we came to know that, the Petitioner Company is having Revenue Generation from operations amounting to ₹ 24,07,081/- as per the Balance Sheet as on 31.03.2017 wherein Net Profit of ₹ 17,54,669/- has been recorded. This fact and circumstances evidences that the Petitioner Company is a running company and not a Shell Company.

14. Further that, the Company has not deposited heavy cash in its Bank Account during the period of Demonetisation i.e. from 8th November, 2016 to 31st December, 2016, instead of regular trade deposits, as noticed from the annexed Affidavit along with this Petition/Application.

15. Hence, upon considering the facts and circumstances of this present petition/application, this Bench is of the view that, it would be just and proper to order restoration of the name of the Petitioner Company in the Register of Companies maintained by the RoC.

16. Accordingly, this Petition/Application is allowed. The restoration of the Company's name to the Register of Companies maintained by the RoC Mumbai, is hereby ordered, with a direction that the Company shall comply with the Provisions of the Act. And further it will be subject to payment of costs of ₹ 10,000/- per defaulting year for the violation of not filing Balance Sheets since F. Y. 2010-11 to 2012-13 (i.e. totalling ₹ 30,000/-) and ₹ 20,000 per defaulting year for the violation of not filing Annual Returns and Balance Sheets since F. Y. 2013-14 to 2015-16 (i.e. totalling ₹ 60,000/-), i.e. in total ₹ 90,000/- to be paid by way of Demand Draft in favour of "Pay and Accounts Officer, Ministry of Corporate Affairs, Mumbai", within 7 days from the receipt of the duly certified copy of this Order, to this office. Consequentially thereupon the Bank Account/s if freezed shall get defreezed and to be operated by the Petitioner Company.

17. This Petition bearing No. 770/252/NCLT/MB/2017 is, therefore, disposed of on the terms directed above. The Learned RoC shall give effect of this Order only after perusal of the Compliance report of cost imposed. The Company is directed to file all the required documents and shall fulfil other relevant statutory compliances within 30 days from Restoration of its name in the Register of Companies maintained by RoC.

18. Ordered accordingly. To be consigned to Records.

Sd/-

Dated : 09.02.2018

BHASKARA PANTULA MOHAN
MEMBER (JUDICIAL)

Avinash