

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

CP No.91/ALD/2017

*(under Section 252(3), read with 248 of
the Companies Act, 2013 (Corresponding
Section 560 of The Companies Act, 1956),
and National Company Law Tribunal
Rules)*

IN THE MATTER OF:

1. M/s. Mansoor Concrete Pipe Private Limited
having its Registered office at 108,
Benajhabar, Kanpur, CIN No.U26954UP1986PTC007743

2. Mohd. Raqeeb S/o Shri Shobрати,
Resident of 112/190, Benajhabar, Kanpur

...APPLICANTS

VERSUS

Registrar of Companies Uttar Pradesh & Uttaranchal,
Having its Office at 37/17, Westcott Building,
The Mall, Kanpur-208 001

...RESPONDENT

JUDGMENT/ORDER DELIVERED ON 07.11.2017

CORAM :Sh. Harihar Prakash Chaturvedi, Member(J)
FOR THE PETITIONER :Sh. Shahid Kazmi, Advocate.
FOR THE CENTRAL GOVT. :Sh. Krishna Dev Vyas, CGSC

PER: SH. HARIHAR PRAKASH CHATURVEDI, MEMBER (J)



ORDER/JUDGMENT

The Present Petition is filed under section 560(6) of the Companies Act, 1956 by the Applicant Company **M/s. Mansoor Concrete Private Limited**, and others seeking for restoration of its name in the Register of office of the Registrar of Companies, Kanpur, Uttar Pradesh. The Applicant company name stands struck off through a Gazette Notification dated 11th August, 2007 the name of the appellant's company finds place at serial no.1645 of the Gazette.

The facts in brief raising to the present petition are stated as under:

- (i) The Applicant Company No.1 was incorporated under the provision of the Companies Act, 1956 with the Registrar of Companies, U.P. on 05.03.1986 and was allotted Registration Number as 007743.
 - (ii) The Registered office of the Petitioner No.1 Company is situated at 108, Benajhabar, Kanpur (CIN No- U26954UP1986PTC007743)
 - (iii) The main objectives of the petitioner company have been described in details in the main company petition.
2. The facts of the present petition, those are necessary for the disposal of the present case, are described in para 7 to 10, 13, 14 to 20 of the present petition and precisely may be reproduced hereunder:

That one of the Director of the Company Late Mohd. Rafiq was looking after the affairs of the Company in an effective manner on outsource who died on 09.12.2015 after a prolong illness.

That after the death of the then Director, Late Mohd. Rafiq and other Directors decided to inform the Registrar of the Companies to delete the name of the deceased director and to liquidate, windup and dissolve the affairs of the Company voluntarily, as per the Ancillary and incidental object clause (26), (27), (28) & (29) by complying relevant Company Act and applicable rules.

That in reply to the request of the Directors, vide letter dated 17.06.2016, the respondent, Registrar of Companies supplied copy of the form 32 and form 18 confirming the status of the Company and its incorporation and the list of Directors since the date of inception of the Company.

That since the Directors were not in possession of the records of the Company, nor are fully aware of the statutory compliance procedure, and e-filing, approached the respondents to file their documents, it was then only their request to accept the documents physically was turned down, informing them of the Gazette Notification of August, 2007, confirming deletion of the name of the Company from the Register of the Registrar of the Companies for noncompliance or e-filing of Annual Statement with the respondent.

That as per the Companies Acct, 1956 and in number of cases, this has been upheld by the Apex Court, that unless the company is windup, liquidated and by discharging all its liabilities and debts, it cannot be dissolved, relieving the officers of the company of their responsibilities.



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That the company as on date has assets in its name which belongs to the Directors, being only promoters and shareholders of the company. The applicants are willing to dissolve the company, unless the name of the company is ordered to be restored in the register of the Registrar of the Company, the company cannot liquidate its property and absolved.

That the company wishes to opt for voluntary winding up by following the procedure prescribed as in the Companies Act, 1956 and 2013.

That the company is neither having any charge over the property of the company nor any public deposits which are outstanding nor the company is in default in its repayment of principle or interest thereon.

That there is no inspection or investigation ordered and carried out or yet to be carried out or being carried out against the company and where inspection or investigation have been carried out, no prosecution is pending in any court.

That the company does not have any outstanding loans, secured or unsecured.

That the company does not have any dues towards Income Tax, VAT, Excise Duty, Service Tax or any other Tax or Duty, by whatever name called, payable to the Central or any State Government, Statutory Authority or Local Authority.

That the applicants passed a resolution do hereby undertake to comply with the orders of the Hon'ble Member of the Bench of National Company Law Tribunal having jurisdiction to entertain the petition and follow the necessary statutory proceedings upon the restoration of the name of the Company in the register of the Registrar of the Company U.P. and Utrakhnad, Kanpur, till the liquidation proceedings of the company are continued and company is declared as dissolved or amalgamated.



In view of the above narrated facts, applicants have prayed for certain direction to be issued by this Tribunal, as stated in para 21 of the petition, which may be reproduced herein below:

This Bench may direct the respondents to consider and restore the name of the Company for the purpose of liquidation/amalgamation within a stipulated time period as provided in law with such and further direction and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

3. It is further contended in case the name of the company is not allowed to be restored in the ROC's register, then the petitioner company would have to suffer irreparable loss. Hence, it made following prayer as described hereunder:

It is therefore most respectfully prayed that the opposite party may direct to restore the name of the Applicant Company on the register of the Registrar of the Companies being company to its original number after setting aside the Gazette Notification dated 11th August, 2007 and allow the applicants to pursue voluntary winding up proceedings so as to dissolve the company after due appropriate of the assets of the company among its eligible promoters and or pass such other and further orders which may deem fit and proper in the circumstances of the case.

4. The respondent ROC, Kanpur has filed its report stating *interalia* the ground warranting for deletion of the name of the company, those are stated as under:

- (i) The Company did not file its Balance Sheet and Annual Returns either manually in the office of the Respondent up to the year 2005 or through electronic mode from the year 2006 on MCA Portal.
- (ii) Hence, the name of the company was struck off from the register of the Registrar of Companies on 18.04.2017 after following the due procedure prescribed under Section 560 of the Companies Act, 1956.
- (iii) Such order was also published in the Gazette Notification dated 11-17th August, 2007.



5. Notwithstanding the above, the O/o ROC, Kanpur further expressed its no objection in its report for restoration of the name of the company provided that the company has to make e-filing of all their pending statutory returns within a period of three months from the date of order of restoration passed by this Court.

6. We have heard the rival submissions made by the learned counsel for both the parties. It is submitted before us that the order impugned dated 18.04.2017 was passed by the ROC, Kanpur by striking off the name of

the petitioner company from its register. The main grounds for deletion of the name of the company as per its report are such that the company has failed to file its returns from 2005-06 onwards in the portal Ministry of Corporate Affairs.

7. Notwithstanding the above, the office of the ROC, Kanpur has further expressed its conditional no objection contending that the name of the petitioner company can be restored in its register by the order of this Court and subject to compliance of e-filing of all pending statutory returns within a period of three months from the date of the order. That apart this Court should impose a cost on the petitioner, which should be payable in favour of the Central Government.
8. The counsel appearing for the petitioner would explain that the company could not file its return for the year 2005-06, because of that the MCA portal was first started only in 2006 and if there is some omission, if any, on the part of the company, that should be condoned.
9. We carefully consider the submissions made by the learned counsel for both the parties and have gone through the contents of the petition as well as the report of the ROC, the legal proposition for restoration of a company's name is that there should be a strong case to justify a refusal for restoration of the name of the company and normally the rule is to allow the restoration. Such proposition is fortified by a decision of the Division Bench of Hon'ble Delhi High Court in the matter of **ZTE Corporation versus Siddhant Garg & Ors.**, wherein their Lordship has been pleased to observe as such:



“560. Power of Registrar of strike defunct company off register-

.....

(6) If a company, or any member or creditor thereof, feels aggrieved by the company having been struck off the register, the [Tribunal], on an application made by the company, member or creditor before the expiry of twenty years from the publication in the Official Gazette of the notice aforesaid, may, if satisfied that the company was, at the time of the striking off, carrying on business or in operation or otherwise that it is just that the company be restored to the register, order the name of the company to be restored to the register, and the [Tribunal] may, by the order, give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.”

9. Before exercising discretion under this section, the court must be

- (i) satisfied that the company was, at the time of striking of the company, carrying on business or was in operation;
- (ii) it is otherwise just that the company be restored.

The first of this proposition can be answered by a report of the ROC which in this case was positive and this report of the ROC had in fact been considered while passing an order for the restoration of the company. The second is a *prima facie* finding by the Court persuading it to believe that it was “just” to restore the company.

10. The judicial precedents on this subject clearly are in favour of the restoration of the company and it is only by way of an exception that the restoration should be disallowed. Normally the rule is to allow the restoration. Exercising discretion against restoration would thus be an exception and not the rule. The court would also be varying of refusing restoration so as to possibly safeguard the interest of one particular class of affected persons. This is a discretionary power and is evident from the use of the word “may” in Section 560(6). A statutory period of 20 years’ limitation has also been provided in the section for a party to seek restoration. If such a party succeeds the company would be deemed to have been continued in its existence. These observations were quoted with approval by LADDIE J Re Price Land Ltd. [1997] 1 BCLC 468.



“These considerations lead me to the view that the court should be very wary of refusing restoration so as to penalise a particular applicant or in a possibly futile attempt to safeguard the special interests of a single or limited class of affected persons. It would need a strong case to justify a refusal on these grounds. For the reasons set out below, I do not think there are such strong ground here.”

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10. In the light of the above discussion and by following the above stated judicial precedent of Hon'ble Delhi High Court, the present company petition can be allowed and restoration of its name may be ordered by this Court. Therefore, the present company petition is conditionally allowed. The respondent ROC, Kanpur is directed to restore the name of the company on compliance of such conditions.

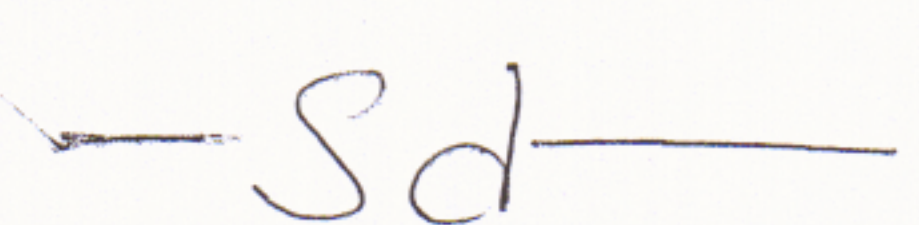
- i. That the company shall pay a cost of Rs.25,000/- in favour of the Central Government through the office of ROC.
- ii. Further, to comply with all its statutory requirements by filing statutory returns within a period of three months from the date of receipt of the copy of the order.

11. A copy of this order further be communicated to the office of ROC, Kanpur.



12. Accordingly, the present company petition stands disposed of.

Date.07.11.2017


H.P. Chaturvedi,
Member (Judicial)

Typed by:
Kavya Prakash Srivastava
(Stenographer)