

**BEFORE THE COMPANY LAW TRIBUNAL,
ALLAHABAD BENCH**

CP No. 104/ALD/2017

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

IN THE MATTER OF

M/s Shasya Mangalam Projects
Private Limited,
a company incorporated under the
Companies Act, 1956, having registered
Office is situated 817/1, 3rd Floor,
Kaveri House Mau Khandari Crossing,
Bye Pass NH-2 Agra, U.P.-282005

...Applicants

Versus

Registrar of Companies Kanpur, Uttar Pradesh
Having its Office at 37/17, Westcott Building,
The Mall, Kanpur-208001

...Opposite Party

Judgment /Order delivered on 29.12.2017

Coram: **H.P. Chaturvedi, Member (J)**

For the petitioner (s)..... **Sh. Pramod Jain, PCS**

For the Respondent(s)..... **Sh. Krishna Dev Vyas (CGSC)**

As per..... **H.P. Chaturvedi, Member (Judicial)**

Order/Judgment



1. The present appeal is filed under Section 252(3) of the Companies Act by the applicant M/s Shasya Mangalam Projects Private Limited and others for seeking restoration of its name in the Register of office of the Registrar of Companies Kanpur Uttar Pradesh.
2. The facts in brief raising to the present company application to seek the above mentioned relief may be described as under: -

The Petitioner Company M/s Shasya Manglam Projects Private Limited was incorporated on 25th May, 2003 under the provisions of Companies Act 1956 it obtained necessary Certificate of Incorporation from the Registrar of Companies, Uttar Pradesh at Kanpur having CIN- U45201UP2003PTC027548 and registered office at 817/1, 3rd Floor, Kaveri House Mau Khandari Crossing, Bye Pass NH-2 Agra, U.P.: -282005. (Copy of Certificate of Incorporation enclosed as **Annexure-C**).

3. The Company could not file its Annual Returns and Balance Sheets which were duly approved by its Board of Directors and audited by its Auditors, further adopted by its Members, for the year 2011-12, 2012-13, 2013-14, 2014-15 and 2015-16 due to technical problems of digital signatures, validation, etc.
4. The Company is a closely held Private Limited Company and having total 8 (eight) shareholders holding substantial share capital mainly by the directors and other persons and long term borrowings Rs.66,22,883.00/-, Trade Payable of Rs.1,39,94,077.00/- Inventory of Rs.1,89,54,000/- as on 31-03-2016 apart from other assets and liabilities. (Certificate of the management is enclosed as **Annexure-E**).
5. The Registrar of Companies, Uttar Pradesh situated at Kanpur published Public Notice No. ROC/STK-7/2806 Dated 11th July 2017 under Section 248 of the Companies Act, 2013 in the Form-STK-7 ON dated 11.07.2017 containing list of total 3228 companies. However, the management of the said Company could not see the notice issued in the bulk to 3228 companies. (Copy of the Notice and extract of the Name of the Company appeared in S.L. No. 2528 at page no. 51 of 65 is enclosed-A).



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6. When the Petitioner Company tried to file aforesaid documents at the portal of the MCA it came to know that the name of the Petitioner Company has been "Strike off". However, no order for striking off its name was served upon the petitioner. On making further efforts and visiting to the website and others sources it came to its knowledge that the Registrar of Companies, Uttar Pradesh, situated at Kanpur has issued notice Vide ROC/STK-7/2806 dated 11.07.2017 for striking off of 3228 companies, wherein the Petitioner Companies name has appeared at Serial No. ROC/STK-7/2806 dated 11.07.2017, which also was hosted in the website of the MCA and now has been downloaded from its website. A copy thereof is annexed with the present Company Petition.
7. It is also submitted that the restoration of name of the Petitioner Company would be in the interest of all its shareholders, creditors as well as of the Mahamaya Infraprojects Limited.
8. The main object to which the Petitioner Company was incorporated can be summarised as under: -
- i. To carry on the business as contractors, sub-contractors, real estate developers, promoters, builders, colonizers and to lay out develop, construct, build, erect, demolish, re-erect, alter, repair, remodel or do any activity relating to the construction of any building scheme roads, highways, docks, ships, sewers, bridges, canals, wells, springs, serais, dams, power plant, wharves, ports, reservoirs, embankments, tramways, railways irrigations, reclamations, improvements, sanitary, water, gas, electric light, telephonic, telegraphic and power supply work of any kind whatsoever.



ii. To purchase, acquire, take on lease or in exchange or in any other lawful manner any area, land, buildings, structures and to turn the same into account and develop the same and dispose of or maintain the same and to build township, commercial complex, or other buildings or conveniences thereon and to equip the same or any part thereof with all or any amenities or conveniences and to deal with the same in any manner whatsoever.

iii. To carry on the business as planners, designers, architects, engineers, promoters, consultants, advisors, interiors, real estate agents in all matters connected with real estate and building constructions.”

9. The Petitioner Company also filed a copy of the certificate of incorporation, memorandum of association and article of association which are annexed with present petition.

10. On the basis of the above stated grounds, the Petitioner Company has prayed for grant of following relief:

a. **The name of the company namely M/s Shasya Mangalam Projects Private Limited be restored to the file pending documents and/or to the Register of the Registrar of Companies, U.P. situated at Kanpur.**

b. **The Respondent be directed to rectify the master data by modifying the status from “Strike off to Active” within the stipulated time as this Hon’ble Tribunal may deem fit and proper.**

c. **An order be passed directing the Respondent to place the name of the company in the same position as if the name of the Company had not been struck off.**

d. **An- interim order in terms of prayers above-nil.**



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e. Such further order or orders be passed and/or directions be given as to this Hon'ble Tribunal may deem fit and proper;

11. Since the Petitioner Company is registered with the Registrar of Companies Kanpur. The ROC Kanpur has submitted its report based on the records maintained by this office to counter the present appeal by perusing a copy as received from the petitioner company.

The ROC Kanpur in its Reported has stated as under: -

i. M/s. Shasya Mangalam Projects Private Limited was incorporated on 27.05.2003 as a Private Limited Company vide their CINU45201P2003PTC027548, having its registered office at 817/1, 3rd Floor, Kaveri House, Mau Khandari Crossing, Bye Pass, N.H.-2, Agra-282005 (U.P.). The main objects for carrying on business are of real estate.

ii. From a perusal of records of the aforesaid company on MCA Portal, it was observed that the petitioner company have not filed statutory returns like Balance Sheets and Annual Returns for the last 5 years, since year 2011. Therefore, the Registrar had reasonable cause to believe that the petitioner company was not carrying on any business or operation for a period of more than two immediately preceding financial years. Neither any application was made by the company within such period for obtaining the status of a document company under Section 455 of the companies Act, 2013.

iii. Therefore, in accordance with the provisions of Section 248 of the Act, the answering respondent sent prescribed Notice dated 30.03.2017 to the company at its registered office address with endorsement to its directors S/Shri Ravi Sharma, Aditya



Maheshwari and Ravi Shanker Tripathi through speed post at their addresses available in the signatory details of master-data on MCA Portal, pursuant to Section 248(1) of the Companies Act, 2013 read with Rule 3 of the Companies (Removal of names of the Companies from the Register of Companies) Rules 2016, intimating about the intention of this office to remove the name of the company from the register of companies on the grounds mentioned therein. It was also requested therein to send representation, if any, within 30 days from the date of receipt of the notice. It was also mentioned that unless cause to contrary is shown within the prescribed time period, the name of the company shall be liable to be removed from the register of companies and the directors of the company shall be liable for appropriate action under the Act. A copy of Notice dated 30.03.2017 has been annexed with the Report.

iv. Further, pursuant to sub-section (1) and sub-section (4) of Section 248 of the Companies Act, 2013 and 2nd proviso to Rule 7(1) of the Companies (Removal of names of Companies from the Register of Companies) Rules 2016, a public notice was got published in one English Newspaper "Hindustan Times" and in Hindi Newspaper "Hindustan" circulating in the Uttar Pradesh on 26.04.2017.



v. A Notification No.18 dated 25.04.2017 was also published in Weekly Gazette of India, Part-III, Section-1 dated 6th May to 12th May, 2017 pursuant to sub-section (1) and sub-section (4) of Section 248 of the Companies Act 2013 and 2nd proviso to Rule 7(1) of the Companies (Removal of names of Companies from the Register of Companies) Rules 2016, inviting objections from any person to the

proposed removal/striking off the name of company from the register of companies (Copy enclosed as **Annexure-2**).

vi. Since, no representation was received from the company or from its directors nor any objection received from any person. Consequently, the company was dissolved, vide Notification No. 28 dated 03.07.2017 published on 15-21 July, 2017 in Gazette of India, Part-III – Section 1 at Sl. No. 2530 (English) pursuant to sub-section (5) of Section 248 of the Companies Act, 2013 and 2nd proviso to Rule 7(1) of the Companies (Removal of names of Companies from the Register of Companies) Rules 2016 (copy enclosed as **Annexure-3**)

12. Thus, on the basis of above facts and circumstances. The Respondent ROC has taken the impugned action by for striking off the name of the company by following the prescribed procedure under the Companies Act, 2013.

13. Notwithstanding the above, the ROC Kanpur has further contended that the present matter can be decided on its merits with cost, subject to the assurance by the company to file all the statutory returns including the Balance Sheets and Annual Returns etc.

14. We duly considered the pleadings of both parties made in the company petition, in the report of ROC respectively. Further, we heard submission of Shri Pramod Jain, the PCS for applicant and Shri Krishna Dev Vyas (CGSC) for the ROC. The learned PCS has placed reliance on a decision of Delhi High Court Company Appeal No. 25/2012, in the matter of TE Corporation Vs. Siddhant Garg and others' wherein the Division Bench of the Hon'ble Delhi High Court came to examine a statutory provision under Section 560 of the Companies Act,



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1956 with corresponding provision of the English Companies Act, wherein their lordships pleased to observe (and as in para 5, 8 to 10 of the judgment) as such.

"The right of the appellant to file objections as and when execution is filed has not been lost. This remedy is still available to him. Section 560(6) of the Act reads as under:

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

- i. 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."*
 - ii. Before exercising discretion under this section, the court must be satisfied that the company was, at the time of striking of the company, carrying on business or was in operation;*
 - iii. 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 and 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.*
 - iv. 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."*

15. In the light of above referred judicial precedents now it is a settled legal position that the Court should adopt a liberal approach for allowing restoration of company and only by way an exception the restoration



should be denied. The Hon'ble Delhi High Court further emphasized such provision holding such the statute prescribed a period of 20 years of limitations to a party for seeking restoration and after such a party succeeds in its restoration this company would be deemed to have been continued in its existence. While the case of present appellant company is that its name got struck off from the Register of the ROC through the impugned notification dated 11.05.2010. While, the present petition has been filed on 31st June, 2017, which is filed after 6 and half year but is well within limitation.

16. Although, the justification given by the company for not making of statutory compliance for filing of its annual returns are not convincing enough because the company did not make any response to the notices issued by the ROC. However, considering the above stated legal position as settled by the Hon'ble Delhi High Court and by going through other judicial precedents. This Court is expected to adopt a liberal approach to allow such restoration of the name of a company in the ROC's register the Registrar of the ROC. Further by allowing such there would be no serious prejudice to any third party. Because, there is no secured creditor of the Petitioner Company and the company is still having its assets to restart its business, if it is restored in the Register of the ROC.



17. In the light of above discussion, we are of the view, the Petitioner Company deserve for its restoration. Hence, the present petition can be allowed in terms of its prayer clause provided that the company shall make its all statutory compliances and to file statutory returns under the provision of Companies Act 2013 to the office of the Registrar of

Companies
~~Company~~ Kanpur and on the portal of the Ministry of the Corporate Affairs and to report its statutory compliances to the Authority Concern.

18. Therefore, the present company petition is allowed in terms of its prayer clause but with the above stated direction to be complied within three months from the receipt copy of this order. In addition to this the applicants company shall further pay a cost Rs.25,000/- to the Central Govt. through the office of the ROC Kanpur as a precondition for restoration of the its name. The amount of costs imposed to be paid within four weeks from the receipt of a copy of this order.

19. Further, an authentic copy to be filed before the ROC Kanpur at earliest from the receipt of authentic copy of this order from the Registry.

20. With the above stated observation, the present application is allowed and accordingly stands disposed of.

Date. 29.12.2017

Sd
H.P. Chaturvedi,
Member (Judicial)

