

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD

CA No.123/252/HDB/2017
U/s 252(3) of the Companies Act, 2013
R/w NCLT Rules & Rule 87A
of NCLT (Amendments) Rules, 2017

In the matter of

1. Safe guard Manpower Services Private Ltd
Office Flat No. 204, H. No. 8-2-618/8&9,
A B K Olbee Plaza Opp. Care Hospitals,
Hyderabad- 500034, Telangana.
2. Workmen of M/s Safeguard Manpower
Services Private Limited rep by
Its Manager Mr. U.V.R.Varma ... Applicants

Versus

CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL

The Registrar of Companies, Hyderabad,
For Andhra Pradesh and Telangana
2nd Floor, Corporate Bhawan, GSI Post
Near InduAranya, Tattiannaram,
Nagole, Bandlaguda,
Hyderabad - 500068

...Respondent

Date of order: 26th October, 2017

CORAM

Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)

Parties / Counsel present

For the Applicant : Smt. Siri Preeti Duggirala

For the Respondent : Shri Ramesh Chandra Mishra,
Registrar of Companies



Per: Rajeswara Rao Vittanala, Member (Judicial)

ORDER

1. The Present Company Application bearing CA No./123/252/HDB/2017 is filed by Safeguard Manpower Services Private Limited represented by its Shareholder-cum-Managing Director CJR Raju and another U/s 252(3) of the Companies Act, 2013 read with National Company Law Tribunal Rules, 2016 & Rule - 87A of the National Company Law Tribunal (Amendments) Rules, 2017 by inter-alia seeking the following directions:
 - a) Pass an order for restoration of the name of the Applicant Company in the Register of Companies maintained by the Registrar of Companies, Andhra Pradesh and Telangana.
 - b) To direct the Respondent to place the Company and all other persons in the Applicant Company such as Directors, Shareholders, Employees and all other related to the Company, in the same position as if the name of the Company had not been struck off from the Register of Companies.
 - c) On submission of a certified copy of order for restoration passed by this Hon'ble Tribunal, the Respondent may be directed to restore the name of the Applicant Company through electronic mode in the form of an attachment to INC-28 or in any other form as prescribed by Ministry of Corporate Affairs and to publish the restoration order in the Official Gazette and enter the Applicant Company name in the Register of Companies maintained by the ROC.



2. Brief facts of the case, as stated in the Company application, which are relevant to the case, are as under:

- 1) M/s Safeguard Manpower Services Private Limited, (which is referred to as Company herein after) was incorporated under the Companies Act, 1956 on 9th October, 1998 with main Object of supplying manpower and security guards for Industrial, Commercial Establishments, and it has 19 years of experience in supplying manpower.
- 2) There are two Directors in the Company. The Authorized Share Capital of the Applicant Company is Rs.5, 00,000 (Rupees Five Lakhs Only) divided into 50,000 (Fifty Thousand) Equity Shares of Rs.10/- (Rupees Ten Only) each. There are two shareholders holding total Share Capital of the Company and they are also Directors of the Company.

BALANCE SHEET AS ON 31ST MARCH, 2016

ASSETS AND LIABILITIES	Figures as at the end of current reporting period	Figures as at the end of Previous reporting period
EQUITY AND LIABILITIES	Rs.	Rs.
SHAREHOLDERS FUNDS		
SHARE CAPITAL	2,50,000.00	2,50,000.00
RESERVES & SURPLUS	(34,01,409.00)	(35,52,807.00)
MONEY RECEIVED AGAINST SHARE WARRANTS	-	-
TOTAL 1	31,51,409.00	33,02,807.00
SHARE APPLICATION MONEY PENDING ALLOTMENT	3,79,049.00	19,52,792.00
TOTAL 2	3,79,049.00	19,52,792.00
NON-CURRENT		



LIABILITIES		
LONG TERM BORROWINGS	-	-
DEFERRED TAX LIABILITIES (NET)	1,85,343.00	1,85,343.00
OTHER LONG TERM BORROWINGS	9,01,202.00	7,01,195.00
LONG TERM PROVISIONS	-	-
TOTAL 3	10,86,545.00	8,86,538.00
CURRENT LIABILITIES		
SHORT TERM BORROWINGS	-	-
TRADE PAYABLES	-	-
OTHER CURRENT LIABILITIES	40,00,346.00	43,85,401.00
SHORT - TERM PROVISIONS	4,40,000.00	2,90,000.00
TOTAL 4	44,40,346.00	46,75,401.00
TOTAL (1+2+3+4)	27,54,531.00	42,11,924.00
II. ASSETS:		
(1) NON-CURRENT ASSETS		
(a) FIXED ASSETS		
(i) TANGIBLE ASSETS	2,50,549.00	3,38,274.00
(ii) INTANGIBLE ASSETS	-	-
(iii) CAPITAL WORK - IN - PROGRESS	-	-
(iv) INTANGIBLE ASSETS UNDER DEVELOPMENT	-	-
(b) NON-CURRENT INVESTMENTS	-	-
(c) DEFERRED TAX ASSETS (Net)	1,02,767.00	1,04,096.00
(d) LONG TERM LOANS AND ADVANCES	1,36,000.00	56,000.00
(e) OTHER NON-CURRENT ASSETS		
TOTAL 1	4,89,316.00	4,98,370.00
(2) CURRENT ASSETS		



(a) CURRENT INVESTMENTS	-	-
(b) INVENTORIES	-	-
(c) TRADE RECEIVABLES	12,04,366.00	14,94,399.00
(d) CASH AND CASH EQUIVALENTS	4,88,241.00	1,81,352.00
(e) SHORT-TERM LOANS AND ADVANCES	1,27,431.00	9,03,737.00
(f) OTHER CURRENT ASSETS	4,45,177.00	11,34,066.00
TOTAL 2	22,65,215.00	37,13,554.00
TOTAL (1+2)	27,54,531.00	42,11,924.00

- 3) The Company is successfully running in profits and filed its ITR's in time. The details of Income tax paid by the Applicant Company are mentioned below:

ASSESSMENT YEAR	2013-14	2014-15	2015-16	2016-17
Income Tax paid	1,84,839.00	3,28,903.00	2,90,361.00	1,49,924.00



The Company is regularly conducting the Annual General Meetings and Board of Directors Meeting and presented its Annual Reports and Audit Reports of the years 2013-14, 2014-15, 2015-16 as per provisions of the Companies Act, 2013 and it also holds all valid Labour License issued by Government of Telangana valid till 31st December, 2017.

- 4) The Company supplies manpower services to esteemed Companies and Business houses and has maintained long standing business relationship and goodwill with its clients. There are seven ongoing contracts of the Company with its clients. The Company was issued with Contract wise license by Ministry of Labour & Employment and Ministry of Commerce and Industry. The Company regularly files the Register of Wages

(Form-XVII) under the Contract Labour (Registration and Abolition) Central and A.P.Rules regularly with the concerned statutory authorities.

- 5) The Company is providing employment to 201 workmen, working with different clients of the Company. It contributes to Employment State Insurance Corporation. The Company is supposed to pay Rs.15,74,401 (Fifteen Lakhs Seventy Four Thousand Four hundred and one) towards Wages, Provident Fund Contributions and ESI Contributions which are due, to be paid for this month. The Company operates three Accounts in different banks as mentioned below:

- a) Axis Bank Current Account No.370010200003599, Himayathnagar Branch, Hyderabad.
- b) State Bank of India Current Account No.30871539627, Old M.L.A. Quarters, Basheerbagh.
- c) HDFC Bank Current Account No.00212000020968.

- 6) The Company has register with various statutory authorities under different Acts due to nature of its business. Accordingly, the following actions have been taken by the Company, in order to comply various conductions prescribed under respective Acts;

- (a) Returns to Income Tax Department are filed upto date vide PAN No.AAFCS5943L and the details of Income tax paid are mentioned below:

ASSESSMENT YEAR	2013-14 (Rs.)	2014-15 (Rs.)	2015-16 (Rs.)	2016-17 (Rs.)
Income Tax paid	1,84,839.00	3,28,903.00	2,90,361.00	1,49,924.00

- (b) It has registered with the Labour Department of Government of Telangana with registration



certificate No. SER/HYD/ALO/03/24675/2017 dt. 03/01/2017 valid upto 31/12/2017.

- (c) It was issued with License by the Office of the Registering and Licensing Officer under Contract Labour (R&A) Act, 1970 vide Form-VI (under Rule 25 (1)) for doing the work in different business entities and establishments, the same is herewith enclosed for kind perusal.
- (d) The Company maintains the Form-XVII i.e., Register of wages to be maintained under Rule 78(1) (a) (i) of Contract Labour (Reg. & Abolishing) Central and AP Rules. The Applicant Company is registered with Employees Provident Fund Organization with establishment ID APHYD0035730000 and promptly contributing the contribution as required under provisions of the Act. The Company is also registered under Employees State Insurance Corporation and complying contribution as required under the Act. The Company complied with filing with ROC till 31/03/2013 at once for ten years starting from financial year 2004 to 2013 on 14/11/2014.
- (d) The Company had its registered office at No. 3-6-89/4/1/1, Avanti Nagar, Basheerbagh, Hyderabad, Telangana - 500029, and the said registered office was shifted to 5-9-22/4/D, Adarsh Nagar, Hyderabad, Telangana, India - 500063 but the same was not intimated to the ROC, which resulted in non-receipt of notices issued by ROC for strike off of the Company.
- e) The Company accepts defaults in question in complying with statutory provisions and lodge the same with ROC for three consecutive years due to



inadvertence and oversight. It is neither intentional nor deliberate and undertakes to rectify those errors.

- f) The Company used to supply manpower services to different Companies and top most Business houses. It has good name and goodwill in the market for supplying manpower as required for the market and workmen are working with Company for long time. Even client Companies are availing the services of the Applicant Company workmen for a long time. The Company is having the following ongoing contracts:

- (a) M/s Tata Boeing Aerospace Limited
- (b) M/s Tata Lockheed Aerostructure Limited
- (c) M/s Tata Sikorsky Aerospace Limited
- (d) M/s Tata Advance System Limited
- (e) M/s Hero Moto Corp Limited
- (f) M/s Idea Cellular Limited
- (g) M/s Nova Integrated Systems

Due to the Strike off of the name of the Company, the above contracts will be rescinded resulting in unemployment of the workmen of the Applicant Company

- g) There are 201 workmen in the Employment of Company, working at different client Companies, out of 201 workmen, 81 of them have approached this Hon'ble Tribunal and gave their authorization affidavits duly notarized, along with their personal photo identity card, employment identity card and wage slip, authorizing the Manager to file this Application. If the Company's name is not restored, there will be financial loss to the Company and workmen, and their families.



Due to impugned action, workmen are raising hue and cry for their payment of their wages.

h) The Company is having its bank accounts vide Current Account No.370010200003599, in AXIS Bank, at Himayathnagar Branch, Current Account No.00212000020968 in HDFC Bank and Current Account No.30871539627 in SBI Bank at Old M.L.A.Quarters, Basheerbagh Branch. During the month of September, the Company was informed by its bankers that the operations of the Applicant Company bank accounts are being suspended / freezed as per the instructions of the Ministry of Corporate Affairs and Finance Department, due to the strike off of the name of the Applicant Company by the ROC, Hyderabad.

7. I have heard Mrs. Siri Preti Duggirala, learned Counsel for the Company and Mr.R.C.Mishra, Registrar of Companies, Hyderabad for Andhra Pradesh and Telangana and have carefully perused all the pleadings and the extant provisions of Company law.

8. The learned Counsel for applicant while reiterating the pleadings made in the application, has further urged that due to the mistake committed by the Company, its employees, general public should not suffer. The Company is diligently complying with all extant provisions of Company Act in submitting all necessary documents except three documents in question, which leads to striking off the Company. It could not received the impugned notices issued by the Registrar of Companies, as those notices are stated to have been sent to old address of Company. After receiving communication from its Banker intimating Debit Freeze of its accounts with them, the Company



has verified its records and then it came to know that changed address as mentioned supra was not communicated and it did not file the required documents with Registrar of Companies. The learned counsel, therefore, submit that the Tribunal may exercise its jurisdiction under the Companies Act, 2013 to restore the Company's name on the roll of Registrar of Companies, since several poor employees are suffering a lot for non-payment of their salaries as stated in the application.

9. Mr. Ramesh Chandra Mishra, the learned Registrar of Companies, is present in Tribunal and has submitted that the Department, after duly verifying its records only, has issued impugned notices, in prescribed Form STK-5 on 05.05.2017, and got published in official Gazette on 27.05.17 & 03.06.17. And thereafter, issued the impugned final Gazette publication dated 21.07.17 striking off the applicant Company. He has further submitted that actions in question are strictly in accordance with extant provisions of Companies Act, 2013. However, he submit that since the applicant Company is submitting that it is suffering irreparable loss and injury by the impugned action, the Tribunal may consider for restoration of Company's name, however, subject to filing required documents, which leads to taking impugned action, along with prescribed fee/addl.fee/fine with further commitment that the Company would not commit such type of violation(s)/offences or any provisions of Companies law in future.
10. In order to examine the issue of striking off companies, it is necessary to advert to relevant provisions in



Companies Act, 2013. And the relevant provisions are sections 248 and 252 of The Companies Act 2013

Chapter XVIII deals with Removal of Companies from the Registrar of Companies.

Power of Registrar to remove name of company from register of companies

248 (1) Where the Registrar has reasonable cause to believe that—

- (a) *a company has failed to commence its business within one year of its incorporation;*
 - (b) *the subscribers to the memorandum have not paid the subscription which they had undertaken to pay within a period of one hundred and eighty days from the date of incorporation of a company and a declaration under sub-section (1) of section 11 to this effect has not been filed within one hundred and eighty days of its incorporation; or*
 - (c) *a company is not carrying on any business or operation for a period of two immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant company under section 455, he shall send a notice to the company and all the directors of the company, of his intention to remove the name of the company from the register of companies and requesting them to send their representations along with copies of the relevant documents, if any, within a period of thirty days from the date of the notice.*
- (5) *At the expiry of the time mentioned in the notice, the Registrar may, unless cause to the contrary is shown by the company, strike off its name from the register of companies,*



and shall Gazette of this notice, the company shall stand dissolved.

- (6) The Registrar, before passing an order under sub-section (5), shall satisfy himself that sufficient provision has been made for the realisation of all amounts due to the company and for the payment or discharge of its liabilities and obligations by the company within a reasonable time and, if necessary, obtain necessary undertakings from the managing director, director or other persons in charge of the management of the company:

Provided that notwithstanding the undertakings referred to in this sub-section, the assets of the company shall be made available for the payment or discharge of all its liabilities and obligations even after the date of the order removing the name of the company from the register of companies.

Appeal to Tribunal deals with under Section 252 of the companies' act, which reads as follows:

252 (1) Any person aggrieved by an order of the registrar, notifying a company is dissolved under section 248 May file an appeal to the Tribunal within a period of three years from the date of the order of the Registrar and if the Tribunal is of the opinion that the removal of the name of the company from the Register of companies is not justified in view of the absence of any of the grounds on which the order was passed by the registrar, it may under restoration of the name of the company in the register of the companies; provided that before passing any order under this section that liberal shall give a reasonable



opportunity of making representations of being heard to the register, the company and all the persons concerned:

Provided further that if the register is satisfied 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, which requires restoration in the register of companies he may within a period of three years from the date of passing of the order of dissolving the companies under section 248, file an application before the tribunal seeking restoration of name of such company

(2) *A copy of the order passed by the Tribunal shall be filed by the company with the registrar within 30 days from the date of the order and on receipt of the order the Registrar shall cause the name of the company to be restored in the register of companies and shall issue a fresh certificate of incorporation*

(3) *If a company or any member or creditor or workmen d feels aggrieved by the company having its name struck off from the Register of companies, the Tribunal on an application made by the company, member, creditor or workmen before the expiry of 20 years from the publication in the official Gazette of the notice under subsection (5) of section 248 may if satisfied that the company was, at the time of its name being struck off, carrying on business or in operation or otherwise it is just that the name of the company be restored to the Registrar of companies, order the name of the company to be restored to the Registrar of companies, the Tribunal may, by the*



order, give other such directions and make such provisions as deem just for placing the company and all the persons in the same position as merely as may be in the name of the company had not been struck off from the Register of companies.

11. As stated supra, there is a prescribed procedure under the Act as to how the Registrar of Companies to strike off from the Register of companies. By reading of averments made in the application and the submission made by the Learned Registrar of Companies, the impugned notices have been issued in accordance with law as stated supra. However, before taking final action to strike off a Concerned Company U/s 248(5), the Registrar of Companies, is under duty to follow proviso 6 of section 248, which mandates the Registrar of Companies to satisfy himself that sufficient provisions has been made for realisation of all amounts due to the Company and for payment or discharge of its liabilities and obligations etc. In the instant case, as stated supra, there are several casual employees/workers, who are due be paid their wages by the Company, and they have also filed their individual affidavits by expressing their hardships for sudden Debit Freeze accounts of the Company with its Bankers. However, the Registrar of Companies has failed to see this issue before issuing the impugned Gazette notification, leading even workers are aggrieved by the impugned action However, the Learned Counsel for the applicant pleaded that in view of hardship, the employees of Company, apart from Company facing, a lenient view may be taken by the Tribunal in the interest of justice.



12. As per section 252 (3)as extracted above, a Company, or any member or creditor workman, if they feel aggrieved by striking off its name can approach the Tribunal by way of application , before expiry of 20 years after date of publication. On being filed an application,the Tribunal can order to restore striking off company on its role,if it is satisfied that the company was, at the time of its name being struck off, carrying on business or inoperation or otherwise it is just that name of a company be restored to the Registrar of companies.

As narrated supra, it is not in dispute application has been filed by properly authorised person on behalf of Company, it is within limitation and it is carrying on business even by time of impugned action, and it has suitably explained the reasons for not filing required documents with Registrar of Companies, which ultimately leads to impugned action.



13. The Ministry of corporate affairs has issued a notification dated 26 December 2016 framing the rules under section 248 known as companies (Removal of names from the ROC) Rules 2016

Rule 3 (2) and (3) are relevant to the present case, which is extracted below for ready reference:

“3(2): for the purpose of sub rule (1) The Registrar shall give a notice in writing in the form of STK-1 which shall be sent to all the Directors of the company at the addresses available on record by registered post with acknowledgement due or by speed post

3(3): The notice shall contain the reasons on which the name of the company is to be removed from the

Register of companies and shall seek representations, if any against the proposed action from the company and its directors along with the copies of the relevant documents if any, within a period of 30 days from the date of notice

Manner of Publication of Notice:

The rule 7 is read as to manner of publication of notice:-(1) the notice under subsection (1) or subsection (2) or section 248 shall be in form STK -5 or STK-6 , as the case may be and be-

- (I) placed on the official website of the Ministry of corporate affairs on a separate link established on such other website in this regard
- (II) Published in the official Gazette
- (III) Published in English language in leading newspaper and at least once in vernacular language in leading vernacular language newspaper, both having wide circulation in the state in which the registered office of the company is situated



Rule 9 deals with the Notice of striking off and dissolution of the company.

14. Article 19(g) in the Constitution of India 1950, confers right to all citizens of India to practice any profession or to carry on any occupation, Trade or Business.

In accordance with this Constitutional provision, the Companies Act of 2013 also confer such rights to its citizen by permitting them to incorporate a Company under the Act to carry on any profession, Trade and Business. In the instant case, it is not in dispute that

the Company is incorporated in accordance with Act and prima facies to prove that the Applicant Company is following all extant provisions of companies Act in consonance with its Memorandum of Association and Articles of Association of the Company till the impugned violation(s) are noticed. It is not in dispute that Registrar of the Companies is empowered to take the impugned action and only the point here is that he has to strictly comply with provisions as extracted above. A Court/Tribunal cannot interfere with normal activities of business of a Company being carried on in accordance with law unless any serious violation of law committed by a Company. As stated supra, the impugned violations are not so severe so as to take serious view of it. Moreover, the Company has come forward to file all required documents comply in accordance with law along prescribed/additional fee along with fine. It is also relevant to point out here that there is no bar for a Company, which is struck off, can register new company, in accordance with law.

15. In view of the foregoing discussions of the facts and the relevant extant of provisions of the companies Act 2013 and rules here under, I am satisfied that the applicant Company has filed the present application within prescribed time under law and also shown sufficient reasons to order Restoration of its name in the Register of companies maintained by the Registrar of Companies. Therefore, the Company application deserves to be allowed, however, subject to filing all the pending returns, Annual returns, Balance sheets, statements etc along with prescribed and addl. fee under law. And also subject to giving undertaking that



they would not resort to such type of violations in future.

16. By exercising the powers conferred on this Tribunal under Section 252 of the Companies Act, 2013, and Rule 87A of NCLT (Amendment) rules 2017 R/w NCLT Rules, 2016, the Company application bearing CA No./123/252/HDB/2017 is disposed of with the following directions:

- 1) The Registrar of Companies, the respondent herein, is ordered to restore the original status of the Applicant Company as if the name of the company has not been struck off from the Register of Companies.
- 2) The Applicant company is directed to file all the statutory document(s) pending along with prescribed fees/ additional fee/fine as decided by ROC within 45 days from the date on which its name is restored on the Register of companies by the ROC;
- 3) The Company's representative, who has filed the Company application is directed to personally ensure compliance of this order.
- 4) The restoration of the Company's name is also subject to the payment of cost of Rs 25,000/- (Rupees twenty five thousand) to be paid into the account of Pay and Accounts Officer(PAO) Ministry of Corporate Affairs payable at Chennai;



- 5) The applicant is directed to deliver a certified copy of this order with ROC within thirty days from the date of receipt of this order.
- 6) On such delivery, and after duly complying with above directions, Registrar of Companies, Hyderabad is directed to, on his office name and seal publish the order in the official Gazette;
- 7) This order is confined to the violations, which ultimately leads to the impugned action of striking off the Company, and it will not come in the way of ROC to take appropriate action(s) in accordance with law for any other violations /offences, if any, committed by the applicant company prior or during period striking off of the company.



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Dy. Regr./Asst. Regr./Court Officer/
National Company Law Tribunal, Hyderabad Bench


RAJESWARA RAO VITTANALA
MEMBER (JUDICIAL)

प्रमाणित प्रति
CERTIFIED TRUE COPY
केस संख्या
CASE NUMBER C.A.No. 123/252/HDB/2017
निर्णय का तारीख
DATE OF JUDGEMENT 26.10.2017
प्रति तैयार किया गया तारीख
COPY MADE READY ON 24.11.2017