

IN THE NATIONAL COMPANY LAW TRIBUNAL HYDERABAD
BENCH, HYDERABAD

CA.No 156/252/HDB/2017
U/s 252 of the Companies Act, 2013

In the matter of:

Indica Homes Private Limited
Sharif Buildings, III Floor,
6-2-6, Lakdikapool,
Hyderabad-5000 04, Telangana

CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL

...Applicant



Versus

The Registrar of Companies
For Andhra Pradesh & Telangana
2nd Floor, Corporate Bhawan,
Near- Central Water Board,
GSI Post, Nagole, Badlaguda,
Hyderabad - 500 068

...Respondent

Date of Order: 27.10.2017

CORAM

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

Parties / Counsels Present

For the Applicant:

Mr.Venkata Swamy
Reddy Veerapareddy,
Director

For the Respondent:

Mr. Ramesh Chandra
Mishra, ROC

Per: Rajeswara Rao Vittanala, Member (Judicial)

ORDER

1. The present Company Application bearing CA.No.156/252/HDB/2017 is filed by Indica Homes Private Limited, U/s 252 of the Companies Act, 2013, by seeking following reliefs;

- 1) To issue notice to the Respondent/Registrar of Companies in this Appeal in terms of Section 252 of the Companies Act, 2013;
- 2) To nullify the order of the Respondent's office in striking off the name of the Company under Section 248 of the Companies Act, 2013;
- 3) To change the status of the Company from 'Strike off' to 'Active' to enable the Company to upload the Returns for the years 2012-2013, 2013-2014, 2014-2015 and 2015-2016 upon payment of requisite fee together with additional fees.
- 4) To direct the Registrar of Companies, Hyderabad to accept the filing of Annual Accounts and Annual Returns for the years 2012-2013, 2013-2014, 2014-2015 and 2015-2016 as per the law with payment of late fee;
- 5) To pass such other order(s) as may be deemed fit in the interest of the justice;



2. Brief facts of the case, leading to filing of the present application, in brief, are as follows:

- 1) M/s Indica Homes Private Limited is a Private Limited Company (hereinafter referred to as the Company) was incorporated under the provisions

of the Companies Act, 1956, in the erstwhile state of Andhra Pradesh (presently in the state of Telangana) under the name and style “Indica Homes Private Limited” on 20.05.1999, and its authorised share capital of the Company is Rs.14,00,000/- divided into 1,40,000 equity shares of Rs.10/- each. The current issued, subscribed and paid-up capital of the Company is Rs.7,15,000/- divided into 71,500 equity shares of Rs.10/-each.

- 2) The main objects of the Company, in brief, are to acquire by purchase, lease, exchange, rent or otherwise and deal in lands, buildings, etc; to carry on the business of properties of lands, flats, townships satellite cities, dwelling houses, industrial estates, etc., and to promote undertaking or industry for trade and manufacture of precast reinforced concrete and elements for housing and prefabricated building structures, spun pipes and poles in both reinforced and water supply pipes and fittings, fixtures, hardware, paints, cement, steel bricks etc.,
- 3) The Company, on its incorporation in the year, has commenced its business activities, and it is regularly conducting Annual General Meeting’s up to date and latest of those meetings conducted are 30th September, 2013, 30th September, 2014, 30th September, 2015, 30th September, 2016. The Company has entrusted to its engaged professional to comply with all statutory returns in accordance with law with Registrar of Companies, to its engaged professional.



Therefore, it is under the impression that the engaged professional has filed all statutory returned with ROC till it know that the impugned action of strike off of the Company on MCA web portal.

- 4) On coming to know about the impugned notice No. ROC(H)/248(5)/STK-7/2017, dated 21.07.2017 that Company's name was struck off in the Register of Companies, the Applicant Company tried to file the annual returns. However, it is stated by the Office of the Respondent that once the Company name is struck off, they did not have any power to restore, and it is only the Tribunal, which could have the power to consider for restoration of the Company. On enquiry, it came know that the Company's annual returns for last financial years i.e. 2012-2013; 2013-2014; 2014-2015 and 2015-2016 were not filed. However, it could not notice the prior notice issued by the ROC before taking the impugned action of Striking off the Company. Hence, the present application.



3. Heard Shri. Venkata Swamy Reddy Veerapareddy, Director for the Applicant Company and Mr. R.C.Misra, Registrar of Companies and also perused all pleadings of both the parties. Ref. No. ROCH/SEC252/31743/IndicaHomes/STACK/2017, dated 24.10.2017 of ROC.
4. Shri VVS Reddy submit that he is one of Directors on the Board of Directors of the Company by holding 5,100 equity shares of Rs.10/- each aggregating to

Rs.51,000/- and he is a Director of the Company since the date of incorporation. He is duly authorized by the Board of Directors of the Company to file this appeal before this Tribunal, vide Board Resolution dated 27.09.2017.

5. He has submitted that the Company had turn over and the creditors and trade debtors apart from the shareholders. The non-filing of the returns by the Applicant Company is due to failure of the staff of the consultant professional, who was entrusted to take care of the compliance with the provisions of the Companies Act, 1956/2013 and it is neither wilful nor intentional. He is willing to submit all the pending returns with the ROC, along with prescribed fees within time prescribed by the Tribunal. Therefore, he submits that he may be permitted to file all the pending returns with the ROC within stipulated period by condoning the delay in filing the same.



6. The ROC, who is present in person before this Tribunal, submit that he has already filed his report vide ref. No. ROCH/SEC252/31743/IndicaHomes/STACK/2017, dated 24.10.2017. He further submitted that the Department has issued the impugned notices duly following extant provisions of Company and the Company has admittedly failed to follow statutory provisions and there is nothing wrong on the Department in taking the impugned action. However, he has no objection to consider the case of applicant subject to filing all pending returns namely annual returns/balance sheet with fees and addl.fees as prescribed under the provisions of the Companies Act, 2013 and an

undertaking that Company will not commit such type of violations in future.

7. 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.



8. 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 Director for the Company 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.

9. 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 in operation 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.

10. 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.

11. 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.

12. It is noticed that Balance sheet as at 31.03.2016 disclosed that current trade payables are Rs. 13,93,485/- and other current liabilities are Rs. 28,37,228/-. Revenue from operations are Rs.



13,50,000/- for the year ended Rs. 13,50,000/- and Rs.70,14,000/-; Employee benefit expenses Rs. 4,08,000/- for 2016 and 3,60,000/- for 2015. A latest report of Independent Auditor's report dated 31.07.2016 enclosed to the application; also certify that the Accounts of Company is prepared in accordance with law. The Company is earning profits and making several transactions and thus it cannot be simply strike off, that too without analysing the consequences of such action in terms of section 248(6) of Act as extracted supra. It is no doubt that the Company, on its part, is under statutory obligation to comply with all extant provisions Companies Act, 2013. The Company is now satisfactorily explained to Tribunal the reasons for the delay in filing statutory returns in question and expressed its willingness to file them along with payment of prescribed fee.

As stated supra, the Learned ROC also did not oppose the application but it can be considered subject to compliance of statutory provisions and undertaking etc.

13. In light of aforesaid facts and circumstances of case and the 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 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.

14. 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./156/252/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) 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 of the 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 of 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 the striking off of the company.

CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL

rdl-
RAJESWARA RAO VITTANALA
MEMBER (JUDICIAL)

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

प्रमाणित प्रति
CERTIFIED TRUE COPY
केस संख्या
CASE NUMBER *CA.No.156/252/HDB/2017*
निर्णय का तारीख
DATE OF JUDGEMENT *27-10-2017*
प्रति तैयार किया गया तारीख
COPY MADE READY ON *27-11-2017*