

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD.

C.A.No.151/252/HDB/2017
U/s 252(3) of the Companies Act, 2013.

In the matter of:

AMC Engineering (India) Private Limited,
Registered Office :H.No.40-6-27 (G-F-2)
Bhavani Towers, Ashok Nagar,
Vijayawada - 520010,
Andhra Pradesh. ... Applicant

**CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL**

Versus

The Registrar of Companies,
Andhra Pradesh and Telangana,
2nd Floor, Corporate Bhavan,
Bandlaguda, Nagole,
Hyderabad - 500 068
Telangana.

... Respondent

Date of Order: 26.10.2017

C O R A M:

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

Parties / Counsels present:

Counsels for the Applicant : Mr. D.V.K. Phanindra,
PCS

For Respondent : Mr.R.C. Mishra, ROC

Per: Rajeswara Rao Vittanala, Member (Judicial)

ORDER

1. The Present Company Application bearing No.151/252/HDB/2017 is filed by M/s AMC Engineering (India) Private Limited, under Section 252(3) of the Companies Act, 2013 on 10.10.2017 by seeking the following relief :



- a. an opportunity be given to the Company to restore the company which was struck off by the Registrar of Companies and to continue to carry on the business;
 - b. to direct the Respondent to forthwith restore the name of the Company in the Register of companies and to effect of the restoration, issue the Fresh Certificate of Incorporation in this regard;
 - c. to allow filing of Financial Statements and Annual Returns and other related documents for the Financial Year 2014-15 and 2015-16 onwards with the Respondent;
2. Brief facts of the case, as mentioned in the application, leading to the filing of application, are as follows:



- a) M/s.AMC Engineering (India) Private Limited (which is referred to as Company hereinafter) is a Private Limited Company was incorporated under the provisions of Companies Act, 1956 on 07.09.2012 with the Registrar of Companies, Andhra Pradesh with CIN: U45209AP2012PTC082970.
- b) The main objects of Company are to carry on business of all types of Civil, Engineering Contracts, purchase, acquire, lease or in exchange or in any other lawful manner ay land, buildings or properties of any kind for the purpose of investment or resale and rendering all services such as planners, designers, consultants and other services required for execution of any infrastructure projects in India and Abroad etc., and business of purchase, acquire, lease or in exchange or

in any other lawful manner any land, buildings, structures or properties and rendering all services such as planners, designers, consultants, constructions, builders, etc., Its Authorised Share Capital is Rs.1,00,000/-divided into 10,000 Equity Shares of Rs.10/- each and Paid-up Share Capital of the Company is Rs.1,00,000/-divided into 10,000 Equity Shares of Rs.10/- each.

- c) The Registrar of Companies has issued the impugned letter No. ROCH/248(1)/Removal/82970/2017, dated 17.03.2017 in Form No.STK-1 for removal of name of the Company from the Register of Companies. However, the Company could not respond to it within the stipulated period of 30 days as a communication inadvertently got misplaced. However, it is subsequently noticed that name of Company was struck off and notices dated 05.05.17 and 21.07.17 were also placed in MCA portal and contain list of many Companies includes name of applicant's Company.
- d) The Company started their business after its commencement and also used to file its Annual Returns (Financial Statements) upto 31.03.2014. However, due to non -filing any of the annual returns for the years 2014-15 and 2015-16, the name of the company was struck off on the assumption that Company was not doing any business.
- e) The Company has exclusively appointed one Consultant to look after the work of filing of



Annual Returns with the ROC, and the Applicant Company was under the impression that the Annual Returns in question were also filed till the impugned action was known. However, the Company is regularly conducting its meetings according to the provisions of Companies Act, 2013, and AGMs were held on 30.09.2015 and 30.09.2016 for the F.Y. 2014-15 and 2015-16 respectively.

- f) The Respondent has struck off the name of the Applicant Company from Register of Companies maintained by ROC, under Sub section (1), (4) and (5) of Section 248 of the Companies Act, 2013. As per law, the Respondent should have sent a Notice in Form No.STK-1, and thereafter a Public Notice in Form No.STK-5 followed by another public notice in Form No.STK-7. Neither Applicant nor the Directors of Company have received notice in Form No.STK-1 either physically or electronically, except displaying a Public Notice in Form NoSTK-5 vide No.ROC/HYDERABAD/STK-1/Revised, dated 05.05.2017 with reference to letter No. ROCH/248(1)/Removal/82970/2017, dated 17.03.2017 and Form No. STK-7 vide No.ROC(H)248(5)/STK-7/2017 dated 21.07.2017 in the Portal maintained by the MCA, which in turn given effect of Striking Off of the Applicant Company from the Register of Companies maintained by the ROC. The Company's Master Data maintained by the ROC in the MCA Portal is also showing the company status as "Strike Off"



g) It is stated that the impugned action cause a lot of hardship to the Company , its shareholders apart from public customers such as delivery of works as per agreed schedule will also be hampered, which will result in breach of terms and the livelihood of all such employees / workers would be at stake. The non-filing of the Annual Accounts / Financial Statements was occurred inadvertently and was neither deliberate nor wilful on the Applicant Company and it is prepared to file all the Financial Statements / Annual Reports within stipulated period as prescribed by the Tribunal



3. Heard Shri D.V.K.Phanindra, PCS for the Applicant and Shri R.C.Misra , Registrar of Companies.
4. The Learned PCS for the Applicant Company, though raised several objections like notices were not properly addressed, Paper publication was not made against the Appellant Company in leading newspapers as substitute service, , he has expressed that the Company is ready to file Annual Accounts and Annual Returns consecutively for 2014-15 and 2015-16 Financial Years and also file all the Financial Statements / Annual Accounts / Annual Reports as at 31.03.2015 and 31.03.2016 within the time stipulated by the Tribunal and also pay the required Compounding Fee / Additional fee, in accordance with the Rules.Threfore, instead of going to various issues raised with regard to issue of proper notice etc, the Tribunal may consider for the relief as prayed for, in the interest of justice and on principle of ease of doing business.

5. Shri R.C. Mishra, Registrar of Companies, who is present before the Bench today to assist the Tribunal to contribute his part in ease of doing business, has submitted that the impugned action was taken strictly in accordance prescribed procedure and law. He has further denied the allegations made by the applicant. However, since the Company is willing to submit pending returns along with prescribed fees/addl fee and the Company is suffering a lot due to the impugned action, the Tribunal may consider the case, subject to filing pending returns, which caused the impugned action, with requisite fee/addl fee in accordance with extant with a further declaration by declaring that they would not commit the similar violation(s) in future.



6. He has also relied upon the judgment of the Hon'ble Bombay High Court in the matter of Purushottamdass and Anr. (Bulakidas Mohta Co. P Ltd.) Vs. Registrar of Companies, Maharashtra, &Ors., (1986) 60 Comp Cas 154 (Bom), by inter-alia stating that;

“the object of Section 560(6) of the Companies Act is to give a chance to the Company, its members and creditors to revive the company which has been struck off by the Registrar of Companies, within period of 20 years, and given them an opportunity of carrying on the business only after the company judge is satisfied that such restoration is necessary in the interest of justice.”

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, the Company, due to nature of business, it has employees including casual workers/labourers and their livelihood is at stake. Therefore, in the interest of Company and its employees and public employment, the case has to be considered favourably. The employees are to be paid their wages for the services rendered. And thus striking off the name of Company would also result in serious repercussions like Debit Freeze accounts of the Company with its Bankers etc. However, the Registrar of Companies has failed to see this issue before issuing the impugned Gazette notification, leading even workers/employees are aggrieved by the impugned action However, the appellant for the Company pleaded that in view of hardship, 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 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.

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. As stated supra, the Company is continuing its business and it is running without any interruption. The Employees are suffering a lot by virtue of impugned action. In terms of section 248(6) of Act as extracted supra, the above consequences are required to be looked into while passing final order under 248(5) of the Act. 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.151/252/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 permitted 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;
- 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.



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प्रमाणित प्रति
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केस संख्या
CASE NUMBER CA.ND.KI/25/HDB/2017
निर्णय का तारीख
DATE OF JUDGEMENT 26.10.2017
प्रति तैयार किया गया तारीख
COPY MADE READY ON 4.12.2017


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


RAJESWARA RAO VITTANALA
MEMBER (JUDICIAL)