

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD.

C.A. No.147/252/HDB/2017
U/s 252 of the Companies Act, 2013

In the matter of

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

1. Rajesh Sandhi Infrac& Metals Private Limited,
Registered Office at H.No.7-1-78/1/B,
3rd Floor, DharamKaram Road, Ameerpet,
Hyderabad - 500 016.
2. Surya Kumar Varma, Director,
Rajesh Sandhi Infrac& Metals Private Limited,
Resident of H.No.6-3-1191/8,
BrijTarang, Begumpet,
Hyderabad - 500 016,
Telangana.
3. Sandhi Rajesh,
Director, Rajesh Sandhi Infrac& Metals Private Limited,
Resident of H.No.7-1-222/2, Flat No.506,
Nature Cure Road, Ameerpet,
Hyderabad - 500 016,
Telangana. Petitioners/Appellants

Versus

1. The Registrar of Companies, Hyderabad
For Andhra Pradesh & Telangana,
Corporate Bhavan, 2nd Floor,
GSI Post, Thatti Annaram,
Bandlaguda, Hyderabad,
Telangana - 500 068.
2. The Secretary to Government of India,
Ministry of Corporate Affairs,
Government of India, Vth Floor,
Shastri Bhavan, R.P. Road,
New Delhi. Respondents



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 Applicants: Shri D. VijayaBhaskar
Advocate

For Respondents : Shri R.C. Mishra,
Registrar of Companies.

Per: Rajeswara Rao Vittanala, Member (Judicial)

O R D E R

1. The Present Company Application bearing CA. No.147/252/HDB/2017 is filed by Rajesh Sandhi Infrass & Metals Private Limited & Others, under Section 252 of Companies Act, 2013 by inter-alia, seeking following reliefs:

- a) to issue notice to the Respondent / Registrar of Companies and the Respondents arrayed in this Appeal in terms of Section 252 of the Companies Act, 2013;
- b) to nullify / set aside the order of the First Respondent's Office in striking off the name of the Appellant Company under Section 248 of the Companies Act, 2013 and restore the name of the Company in the Register of Companies; and to set aside the Notice / Statement issued by Respondent No.1 in respect of disqualification of Directors to the extent of applicable to the Appellate Company.
- c) to Change the status of the Company from 'Strike off' to 'Active' to enable the Appellant



- Company to upload the Returns for the years 2013-14, 2014-15 and 2015-16 upon payment of requisite fee together with additional fees;
- d) to direct the Registrar of Companies / First Respondent, Hyderabad to accept the filling of Annual Return for the years 2013-14, 2014-15 and 2015-16, as per the law with payment of late fee / additional fee; and consequently to allow the Appellant Company to continue and operate its all existing Bank Accounts free from all encumbrances, if affected by the order(s) of the Respondents;
- e) to direct the Respondents to activate the DIN Nos.05300687, and 05300706 of the Appellants 2 and 3 to enable them to file the documents / e-forms on MCA Website.



Brief facts of the case, as mentioned in the application, are as follows:

- a) M/s Rajesh Sindhi Infrs & Metals Private Limited (hereinafter referred to as the Company) was incorporated in Hyderabad on 03.07.2012 as a Private Limited Company, under the provisions of Companies Act, 1956. Mr. Sandhi Rajesh, and Mr. Surya Kumar Varma (Petitioners / Appellants) are the present Directors of the Company with DIN 05300687 and DIN05300706 respectively.
- b) The main objects of the Company are to carry on business as Contractors, sub-contractors for Engineering, Road, Civil, Irrigation, Environmental, Electrical, Chemical, Fertiliser, etc., and its Authorised Share Capital of the Company is Rs.51,00,000/- divided into 51,00,000 Equity Shares of Rs.1/-

each. The current Issued, Subscribed and Paid-up capital of the Company is Rs.1,00,000/- divided into 1,00,000/- Equity Shares of Rs.1/- each. The entire paid up share capital of Rs.1,00,000/- is held by Mr.Rajesh Sandhi and relatives.

- c) The Company has been carrying on its operations and the requisite annual filing for the Financial years 2013-14, 2014-15 and 2015-16 with ROC could not be filed and the Company was let down by the Assistant of the Practising Company Secretary, who had promised to file the same within the stipulated time and Company tried to file the non-filing of returns for the Financial years through MCA Webportal, it was found that the 1st Respondent has already struck off the name from its rolls and the MCA site.



- d) The 1st Respondent has struck off the name of the Applicant Company from Register of Companies maintained by ROC, under Sub section (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 No.STK-5 vide No.ROC/HYDERABAD/STK-1/Revised, dated 05.05.2017 and Form No. STK-7 vide No.ROC(H)248(5)/STK-7/2017 dated

21.07.2017 ink 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"

- e) The Office of the Registrar of Companies grossly struck of the name of the Company from the Rolls of Registrar of Companies, without following the proper procedure prescribed for striking off the name of the Company in terms of Section 248 of the Companies Act, 2013. Basing on non-filing of the returns for the last three years in respect of the Financial Years i.e., 2013-14, 2014-15 and 20-15-16, the RoCs Office has arrived a conclusion that the company had not been carrying on any business or operation for a period of three years immediately preceding Financial years, in spite of the fact that the Balance Sheet filed by the Company with the Registrar of Companies / First Respondent's office for the year 2012-13 clearly shows that the Appellant Company has the Trade Debtors and Creditors in the books of Accounts of the Appellant Company amply clarifies the existence of the business as well as operations of the Appellant Company. Therefore, it is submitted that the Company could not struck from the roles of the RoC. It is running its services and balance sheet showing the Assets and Liabilities of the Applicant company for



the financial years 2013-2014, 2014-15 & 2015-2016 are follows:

Financial Year	Current Assets	Current Liabilities
2013-14	91,16,06,329	91,07,91,031
2014-15	1,51,37,065	1,33,22,365
2015-16	40,14,952	11,37,259

- f) The Company was registered in the year 2012 and commenced its business activities. The Company has recorded sales turn over in several crores and is regular in paying the Income Tax and other statutory dues from time to time and it has Trade Creditors and Trade Debtors.



- g) The Creditors and the Shareholders will badly be affected if the Appellant Company's name is struck off and their legal rights to recover the amount get diluted. The non-filing of the returns by the Appellant Company is due to failure of the staff of the practicing Company Secretary, who was entrusted to take care of the company under the provisions of the act, 2013 and thus, the non-filing of the returns is neither wilful nor voluntary on the part of the Appellant Company and under any circumstances non-filing of returns ought not have been construed that the Appellant Company became either dormant or defunct to proceed against such company for being struck off from the rolls of the Respondent.

3. Heard Shri D.VijayaBhaskar , learned Counsel for the Applicants/Appellants' and Shri R.C. Mishra, Registrar of Companies and have also carefully

perused all pleadings along with extant provisions of Companies Act, 2013 along with consequential rules made there under.

4. The learned Counsel, while reiterating various contentions raised in the present application, he has submitted the Tribunal may consider case favourably for the hardship the Company is undergoing by virtue of impugned action, and the Company is willing to file all pending returns along with prescribed fee/addl fee, within time stipulated by the Tribunal. Therefore, 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.



He has also relied upon the judgment of the Hon'ble Bombay High Court in the matter of Purushottamdass and Anr. (BulakidasMohta 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.”

6. Shri R.C. Mishra, Registrar of Companies, who is present today to assist the Bench to decide the case, has submitted that the impugned action was taken

strictly in accordance with law and the allegations made by the applicant are strongly denied. However, since the applicant expressed its willingness to comply law by filing all statutory pending returns with required fee/addl fee, the case can be considered subject filing all pending Returns duly paying the requisite fee in accordance with rules, within the prescribed time and also file an Affidavit declaring that would not commit similar violation(s) 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.

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 is carrying on its normal business as per balance sheets, Income Tax returns etc which are filed along with application. 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. Therefore a lenient view, as expeditiously as possible, is required to be taken in the instant case.

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. As stated supra, the Company is carrying construction 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.



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.147/252/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 with resultant and consequential actions like changing status of Company from 'strike off to Active ; to activate DIN Nos of the applicants etc.
- 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 1,00,000/- (Rupees one lakhs only) 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;
- 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.



Sd/-

RAJESWARA RAO VITTANALA
MEMBER (JUDICIAL)

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

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

**प्रमाणित प्रति
CERTIFIED TRUE COPY**
केस संख्या
CASE NUMBER *CA.No.147/251/HOB/2017*
निर्णय का तारीख
DATE OF JUDGEMENT *26.10.2017*
प्रति तैयार किया गया तारीख
COPY MADE READY ON *4.12.2017*