IN THE NATIONAL COMPANY LAW TRIBUNAL

HYDERABAD BENCH, HYDERABAD.

C.A. No.166/252/HDB/2017
U/s 252 (3) of the Companies Act, 2013

In the matter of:

1. Krishna Godavari LNG Terminal Private Limited
House No. Plot No.54, Do.No.9-1-152/A/3,
3rd Floor, Opp: Patricks High School,
Rezimental Bazar, Secunderabad - 500003

2. DurgaKiron Kanaka Coramutla,
D/o. Manchanapali Gandhi, aged about 48 years,
Street No 13, Laxmikalyan Apartments,
305, Tarnaka, Secunderabad - 500017.

3. Gaurav Mahesh, S/o Mahesh Kumar Tiwari,
Aged about 39 years, resident of House No - 3203
Sector - 37 d, Chandigarh - 160036.

4. Krishnakumar Subramanian,
S/o. Ramchandrapuram Kulathu Subramanian,
Aged about 55 Years,
Gulshan villa, Oomer Park Bhulabhai
Desai road, Mumbai, Maharashtra -400036.

5. Siva Kumar Coramutla,
S/o. Kumaralingam Coramutla, Aged about 52 years,
R/o.12-13-311, St. 13, Flat No. 305,
Taranaka, Hyderabad - 500017. ....Applicants

Versus

The Registrar of Companies, Hyderabad
For Andhra Pradesh & Telangana,
Corporate Bhavan, 2nd Floor,
GSI Post, Thatti Annaram,
Bandlaguda, Hyderabad,
Telangana - 500 068. .... Respondent

Date of Order: 27.10.2017

C O R A M:

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

Parties / Counsels present:

Counsels for the Applicant : Mr. G. Bhupesh, Advocate

For Respondent : Mr. R.C. Mishra, Registrar of Companies

Per: Rajeswara Rao Vittanala, Member (Judicial)

ORDER

1. The Present Company Application bearing CA.No.166/252/HDB/2017 is filed by the M/s. Krishna Godavari LNG Terminal Private Limited & 04 others, under Section 252 (3) of the Companies Act, 2013, by seeking following reliefs:
   a. to set-aside the Order passed by the Respondent vide notice no. ROC (H)/248(5)/STK-7/2017 dated July 21, 2017 striking the name of the Applicant Company;
   b. to direct the respondent to restore the name of the applicant company to its Register;
   c. to direct for placing the Applicant Company and other person in the same position as nearly as may be as if the name of the Applicant Company had not been struck off;
   d. to grant the applicants, time of 15 (Fifteen) days for making all necessary compliances and for filing all necessary forms with the respondent;
2. Brief facts of the case, as mentioned in the application, are as follows:
   a. M/s. Krishna Godavari LNG Terminal Private Limited (hereinafter referred to as the Company) was incorporated under the Companies Act, 1956 on 24.05.2013 as a Private Limited Company with

the Registrar of Companies, Hyderabad. The Registered office of the Company is situated at Plot No. 54, Do. No.9-1-152/A/3, 3rd Floor, Opp: Patricks High School, Rezimental Bazar, Secunderabad-500003.

b. The main objects of the company is to carry out the activities Importer of liquefied natural gas (LNG), a provider of regasification services, and a developer of unique market access points around the world. Develop sea ports for LNG operations suiting for Floating Storage Regasification Units. Develop prerequisite infrastructure, handling equipment and marine pipelines. Implement a dockside or offshore buoy or gateway technologies for LNG to Regasified Natural gas operations and transport the Regasified Natural gas via marine pipelines connecting to the shore based pipelines. To develop land based marine pipeline infrastructure, and Floating regasification UNIT is setup on a floating Barge and is secured with dolphin mooring system and other business and is to provide Floating Regasification on a Barge.

c. The Company is in amidst of its ongoing Project (**"LNG terminal Project"**) which will be located offshore of the Port of Kakinada in the Eastern Indian state of Andhra Pradesh. The Project comprise the Marine Terminal, which shall include a natural gas submarine pipeline and onshore receiving facilities, the FSRU, and a floating storage unit (the "FSU"). The project will accommodate LNG carriers (each, an "LNGC") with capacities ranging from 75,000 to 175,000

cubic meters. The Project will have processing capacity of approximately 4.0 million tons per annum ("mmtpa"). The Company will allow trading LNGCs to dock and offload LNG to the adjacent, moored FSU. The LNG will be then transferred from the FSU to the FSRU for temporary storage, regasification and export to shore via the subsea pipeline. The subsea pipeline will interconnect with the existing natural gas grid in India, allowing transport of natural gas to industrial users in Andhra Pradesh and to other Indian end users.

d. The Company has not filed Annual Returns for the financial years 2014-15 and 2015-16. Hence the Company was served STK-7 notice vide ROC (H)/248(5)/STK-7/2017, U/s 248 dated 21.07.2017 of the Companies Act, 2013 for non-filing of Annual Returns.

e. The Company is Carrying out its business successfully from the date of its incorporation and is conducting the Annual General Meetings regularly in Compliance with the provisions of the Companies Act, 1956 as well as the provisions of Companies Act, 2013, whichever is in force at the relevant period, and the Company has filed the Income Tax returns with the Income Tax Department regularly.

f. The **Annual Accounts** and the **Annual Returns** pertaining to only two financial years i.e. 2014-15 and 2015-16 are to be filed. The applicant shall be able to complete its filing of pending Annual Returns and Financial Statements, upon granting

of the prayers stated in this application, and when the name is restored and change its status from 'Strike Off' to 'Active' in the Register of Companies maintained by the ROC and change .

g. It is running its services and balance sheet showing the Assets and Liabilities of the Applicant company for the financial years 31.03.2015, 31.03.2016 are revenue from operations is Nil and Employee Benefit Expenses is Rs.1,32,000/- and Rs.96,000/-.

h. The Company has commenced business in the recent past and it is ready to file its pending returns and income tax returns as required under the act and requesting to change the status of the Company to active from strike off and give such directions to the Registrar of Companies.

3. The case is listed for admission on 17.10.2017 & 27.10.2017

4. Heard Mr. G. Bhupesh, learned counsel for the Applicant Company, and Mr. R.C.Misra, Registrar of Companies and have perused all pleadings along with extant provisions of law.

5. Mr. G. Bhupesh, the learned counsel for the Applicant, while reiterating various contentions raised in the present application, has further submitted that 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.

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. Shri R.C. Mishra, Registrar of Companies 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 allegation made by the applicant is not correct. However, he has submitted that the Tribunal may consider the case of the Company subject to filing all pending returns namely annual returns, balance sheets with fee and addl. fees as prescribed under the provisions of the Companies Act, 2013. It may also be directed to ensure statutory compliance of applicable provisions of the Companies Act, 2013 without any delay in future.

8. 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.

9. 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 provision 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, the Company is having business transactions continuously as per the financial statements filed and it has employees 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. Therefore, a lenient view is required to be taken by the Tribunal in the interest of justice.

10. 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.

11. 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.

12. 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.

13. As stated supra, the Company is rendering floating Regasification on a Barge and Storage 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.

14. 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.

15. By exercising the powers conferred on this Tribunal under Section 252 of the Companies Act, 2013, the Company application bearing CA

No.166/252/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 pending 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 by way of DD in favour 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.

राष्ट्रीय कंपनी विधि अधिकरण
National Company Law Tribunal
हैदराबाद न्यायपीठ
Hyderabad Bench

Sd/-

RAJESWARA RAO VITTANALA
MEMBER (JUDICIAL)

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

प्रमाणित प्रति
CERTIFIED TRUE COPY
केस संख्या
CASE NUMBER..C.A.No.166/252/HDB/2017
निर्णय का तारीख
DATE OF JUDGEMENT...27.10.2017
प्रति तैयार किया गया तारीख
COPY MADE READY ON...7.12.2017