

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD.

C.A. No.164/252/HDB/2017

U/s 252 (3) of the Companies Act, 2013
R/w NCLT Rules,2017 and Rule 87(A) of
NCLT(Amendment)Rules, 2017

In the matter of

Potens Fitness Solutions Private Limited
Registered Office: Flat No. C-504,
D.No. 8-3-236/2&3,
Dream Homes Harmony, Yousufguda,
Hyderabad-500045, Telangana.

CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL

... Applicant

Versus

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

... Respondent

Date of Order:27.10.2017

C O R A M:

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

Parties / Counsels present:

For the Applicant : Ms. G. Kalpana, CA.

For the Respondent: Shri R.C. Mishra, ROC

Per: Rajeswara Rao Vittanala, Member (Judicial)

ORDER

1. The Present Company Application bearing CA.No.164/252/HDB/2017 is filed by Potens Fitness Solutions Private Limited, Under Section 252(3) of the Companies Act, 2013 R/w NCLT Rules, 2016 and



Rule 87A of the NCLT(Amendment) Rules, 2017 by seeking the following reliefs :

- a) to pass an order for restoration of the name of the applicant in the Register of Companies maintained by the Registrar of Companies, Andhra Pradesh and Telangana;
- b) to direct the Registrar of Companies to place the Company and all other persons in the Company such as Director, Shareholders, Employees and all other related to the Company are in the same position as nearly as may be as if the name of the Company had not been struck off from the Registrar of Companies;
- c) to Order that the applicant shall deliver a certified copy of the order of this Tribunal to the Registrar of Companies (RoC) within 30 days from the date of the order in physical form;
- d) to order that upon delivery of the physical form of the certified copy of the order of this Tribunal, the Registrar of Companies (RoC) enables the applicant to deliver the order through electronic mode in the form of an attachment to INC-28 or with any other relevant form prescribed by Ministry of Corporate Affairs;
- e) To Order that upon such delivery, the Registrar of Companies (RoC), do in his Official Name and Seal, publish the order in the Official Gazette enabling the Company to in the Register of Companies maintained by the RoC;
- f) To allow the Applicant to file pending Financial Statements and Annual Returns with RoC within 30 days, from the date of enabling



the applicant by Roc in his portal, to file such documents under e-filing with requisite fee and additional fee as prescribed under Section 403 of the Companies Act, 2013 read with Rule 12 of Companies (Regulation of office and Fees) Rules, 2014, on or before a date prescribed by the Hon'ble Tribunal etc

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

- a) Potens Fitness Solutions Private Limited (herein after referred to as Company) was incorporated under the Companies Act, on 18.03.2013 as a Private Limited Company with Registrar of Companies, Hyderabad having its registered office at the address shown in the cause title of this application.
- b) The Company is established with main objects to carry business of owning, running, managing and franchising in India or anywhere in the world gymnasias and fitness centres and health. Clubs for men, women and children which includes body building, keep fit Training, body shaping, weight gaining, weight reducing, height increase And/ or to render all types of health care and beauty services including diet, Nutrition, yoga, massage, steam and saunabath, Jacuzzi, health spas, Figure Control, Slimming, aerobics, dance to fitness, physiotherapy Services. Its Authorised Share Capital of the Applicant is Rs.1,00,000/- divided into 10,000 Equity Shares of Rs.10/- each. And Issued, Subscribed and Paid-up Share Capital of the Applicant is Rs.1,00,000/- divided into 10,000 Equity Shares of Rs.10/- each.



- c) As on the date of this application, the Applicant Company has (3) Shareholders and the details of Directors, as per the master data maintained by the Ministry of Corporate Affairs including their date of appointment and DIN numbers as on the date of this petition are as follows:

Sl. No	DIN	Name	Designation	Date of Appointment
1.	01952963	RamuVenigandla	Director	18.03.2013
2.	01994765	RamakrishnaVenigandla	Director	18.03.2013
3.	02193529	Bhaskara Rao Surya Ganni	Director	18.03.2013



- d) The Company is carrying out its business successfully from the date of its incorporation and is conducting the Meeting of Board of Directors as well as General Meetings regularly in compliance with the provisions of the Companies Act, 1956 as well the provisions of the Companies Act 2013 whichever is in force at the relevant period. The directors have assigned the responsibility of completing the filings of the Financial Statements/ Annual Accounts/ Annual Reports and Annual Returns for all the financial years to the accounts officer of the Company. However, due to inadvertence, the applicant couldn't file the returns in time.
- e) The Company held its AGMs for the Financial Years ended 31.03.2014, 31.03.2015 and 31.03.2016 on 30.09.2014, 30.09.2015 and on 30.09.2016 respectively. The Company has filed the Income Tax Returns with the Income Tax Department regularly. It is running

its services and balance sheet showing the Assets and Liabilities of the Company for the financial years 31.03.2014, 31.03.2015 & 31.03.2016 are Rs.27,90,264/-, Rs.33,62,395/- & Rs.57,58,146/- respectively.

f) It is stated that none of the Creditors/Shareholders or any person/persons or any Body Corporate at large would be prejudiced if the name of the Company is restored in the Register of Companies maintained by the Registrar of Companies. Moreover, the Company is planning to enter into the business of the construction of various residential accommodations to various groups of people on affordable rates. The Company also expressed its readiness to file all pending returns in question with prescribed fee/addl fee within time granted by the Tribunal.



g) 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, Procedurally, RoC 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 received notice in Form No.STK-1 either physically or electronically, except displaying a Public Notice in Form No.STK-7 vide No. ROC(H)/248(5)/STK-7/2017 dated 21.07.2017. The said notice has given an effect of Striking off and Dissolution of the Applicant Company. The Company's Master Data maintained by the ROC in the MCA Portal is

also showing the company status as “Strike Off”.

3. Heard G. Kalpana, learned CA for the Applicant Company, and Shri R.C.Mishra, Registrar of Companies.
4. Ms. G.Kalpana, the learned Chartered Accountant for the Company , while reiterating various averments made in the application, has submitted that there are several irregularities committed while taking the impugned action like notices were not properly addressed, Paper publication was not made against the Appellant Company in leading newspapers as substitute service etc. She has further submitted that the Company is filing of Income Tax Returns with the Income Tax Department regularly and the Company is prepared to submit all the Annual Accounts and the annual Returns pertaining to the three Financial Years 2013-14, 2014-15 and 2015-16 within time stipulated by the Tribunal, and also ready to pay the required Compounding Fee/ Additional fee in accordance with the Rules.
5. She has further stated that the Company is having sufficient reserves and surplus, sundry creditors in addition to inventories and cash and cash equivalents and it is not a sick company and being a company with substantial assets and inventories.
6. She has also relied upon the judgment of the Hon’ble Bombay High Court in the matter of Purushottamdas 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. Mr.Ramesh Chandra Mishra, ROC, 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 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.



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 is having properties and running its business and also paying income taxes and is also providing casual employment to several people . 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.

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. 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.

13. 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. ~~164~~/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 consequentially placing the Company and all other persons in the Company such as Director, Shareholders, Employees and all other related to the Company are in the same position as nearly as may be as if the name of the Company had not been struck off from the Registrar 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 50,000/- (Rupees fifty thousand 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. 164/282/HDB/2016*
निर्णय का तारीख
DATE OF JUDGEMENT *27-10-2016*
प्रति तैयार किया गया तारीख
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