

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH AT HYDERABAD**

C.A. No.198/252/HDB/2017
U/S 252 (3) of the Companies Act, 2013
R/w NCLT Rules, 2016 R/w Rule-87A
of the NCLT (Amendment) Rules, 2017

In the matter of:

M/s. Jaydurga Decor Private Limited
Registered Office at 94/2,
CIE (EP), Gandhinagar,
Hyderabad - 500 037, Telangana.
Rep. by its Director Monika Agarwal

...Applicant Company

Versus

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

....Respondent

Date of order 19th November, 2017

CORAM:

Hon'ble Mr. Rajeswara Rao Vittanala, Member (Judicial)
Hon'ble Mr. Ravikumar Duraisamy, Member (Technical)

Parties / Counsels Present:

For the Appellant : Mr. Sharad Sanghi,
Ms. D.Siri Preeti, Advocates

Per: Rajeswara Rao Vittanala, Member (Judicial)

ORDER

1. The present Company Application bearing C.A.No.198/252/HDB/2017 is filed by Jaydurga Decor Private Limited, represented by its Director Ms.Monika Agarwal under Section 252(3) of the Companies Act, 2013 R/w Rules, 2016 Rule-87A of the NCLT(Amendments)Rules, 2017, by



inter alia seeking to direct the Respondent to restore the name of the Appellant Company in the Register of Companies maintained by the Registrar of Companies, Andhra Pradesh and Telangana; to place the Applicant Company such as Directors, shareholders, employees, Employees and all other related to the Company, in the same position as the Company had not been struck off from the Registrar of Companies etc.

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

- a) M/s. Jaydurga Decor Private Limited (which is referred to as Company herein after) was incorporated on 19.03.2013 under the Companies Act, 1956 (CIN U17120AP013PTC086498) with an Authorised Share Capital of Rs.1,00,000/- (Rupees One Lakh only) divided into 10,000 (Ten Thousand) Equity Shares of Rs.10/- each and altogether and there are five shareholders, holding 2000 shares each in the Company and all of them are its Directors.
- b) The main objects of the Company is to carry on the business of manufacturing, buying, selling, and dealing in textiles, cotton, handloom cloth, silk, art silk, rayon, nylon, synthetic fibers, staple fibers, polyesters, worsted, wool, hemp and other fibre and fabric materials, yarn, cloth, linen, rayon and other goods or merchandise whether textiles felted, netted or looped used for domestic, commercial or industrial use. It undertake jobs as interior and exterior designers, decorators, furnishers, cleaners, repairers and render services in all other auxiliary fields as may be required in connection with the interior decoration of flats, bungalow, row houses, all residences, private and public office, shops, government department, stores,



cinema houses, factories by any individual or corporation company and commercial premises.

- c) There are Five Directors in the Company and all are not disqualified under Section 164(2) of the Companies Act, 2013 and the details are as follows:

Sl. No	DIN	Name	Designation	Date of Appointment	Shareholding Ratio
1	06529087	Susheela Agarwal	Director	19.03.2013	2000 Shares @20%
2	06529088	Jitender Agarwal	Managing Director	19.03.2013	2000 Shares @20%
3	06529089	Aditya Agarwal	Director	19.03.2013	2000 Shares @20%
4	06529090	Sriram Agarwal	Director	19.03.2013	2000 Shares @20%
5	06529412	Monika Agarwal	Director	19.03.2013	2000 Shares @20%

- d) The Company has filed their Income Tax Returns for the Assessment Year 2014-15, 2015-16 and 2016-17 and Income tax paid for an amount of Rs.12,42,771/-, Rs.14,54,880/- and Rs.18,01,400/- respectively. The Company is complying with all the provisions of the relevant Acts but it could file annual accounts and annual returns for year 2013-14, 2014-15 and 2015-16 financial years which is neither wilful nor wanton but only due to ignorance / did not seek for any professional advice.
- e) The Company is owner and possessor of the property admeasuring 15,418 sq.mtrs., situated at Apparel Export Park, Gundlapochampally having purchased the same under Registered Sale Deed vide Doc.No.5966 of 2013 dated 31.10.2013. It is genuinely doing business entity in the field of soft furnishings and has been supplying curtain cloth and sofa cloth regularly to over 500 dealers in across India since last four years. It is not a shell Company and never deposited a single pie in its Bank Account during Demonetization. In this



connection, HDFC Bank has issued a Confirmation Certificate dated 10-10-2017 stating that "Jaydurga Decor Private Limited, A/c.No.10417630001591 has not deposited any SBN notes in their account during Demonetization period from 09-11-2016 to 30-12-2016".The Company accepts default of compliances with Registrar of Companies due to ignorance and undertakes to rectify the same and never repeat the said irregularity in future. Company is ready to comply with the compliances and Hon'ble Tribunal may allow the application in ease of doing business. .



3. Heard Ms.D.SiriPreeti, Learned Counsel for Applicant Company and perused all the pleadings filed in support of application along with extant provisions of the Companies Act 2013.
4. The learned counsel for applicant Company submitted that there are permanent Employees who carry out relating to the administration and marketing .Every Project taken up is hired through contract and wages are paid through vouchers. The Company is genuinely doing business entity in the field of soft furnishings and has been supplying curtain cloths. The Learned Counsel submits that she has complied with objections and submitted Balance Sheet to the Registrar of Companies up to 2015.The Balance sheet as on 31st March, 2016 discloses total assets of Rs. 186,286,639.39. The stock in hand which is huge and amounts to 8.50 Crores for which payments and advances are already made vide post-dated cheques to the suppliers and are due to be delivered to the customers and the same would be bounced due to the action of applicant Company Bankers. And the Company would lose its goodwill with its suppliers and reputation. The Bankers of the Company marked debit freeze basing on the impugned action of Registrar of

Companies. Therefore, she submits that the application may be allowed as prayed for.

5. The Registrar of Companies in his Report ROCH/LEGAL/SEC 252/086498/JDPL/STACK/2017/2304, dated 16.11.2017 has stated that Jaydurga Decor Private Limited (U17120TG2013PTC086498) was incorporated on 19.03.2013 in the erstwhile State of Andhra Pradesh under the provisions of Companies Act, 1956. The Jaydurga Decor Private Limited has submitted application by praying to revive the Company from strike off under the provisions of Section 252(3) of the Companies Act, 2013. The Company did not file and also failed to file the Annual Accounts and Annual Returns from its incorporation consecutively for Financial Years 2013-14, 2014-15 and 2015-16 and hence the Company was identified for strike off u/s 248(1) and a notice was issued to Company and its Directors u/s 248(1). Notice under STK-5 dated 05-05-2017 was issued and published in the Gazette and a paper publication also issued informing all the stakeholders about notice published in MCA website and there after Company was marked strike off in MCA portal. Notice under STK-7 also published in the Gazette on 19.08.2017.



However, he submits that the Bench may consider the case of applicant Company on merits and pass appropriate orders, however, subject to filing all the pending Returns viz Annual Returns / Balance Sheet with Fees & Additional fees as prescribed under the provisions of the Companies Act, 2013 and also it may be directed to ensure statutory compliance of applicable provisions of the Companies Act, 2013 without any delay in future.

6. 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.

7. 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.



8. 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.

9. 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.

10. 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.

11. As stated supra, the Company is running its business and also earning profits and latest Balance sheets as on 31st March, 2016 shows profit of about Rs. 38 Lakhs apart huge profits. And thus impugned striking off Company would not only cause prejudice to the interest of Company and also to the



public at large and it also providing employments to several people directly and indirectly.

12. 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 C.A.No.198/252/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 M/s Jaydurga Decor Private Limited (Applicant Company herein) as if the name of the Company has not been struck off from the Register of Companies, and take all consequential action like making the status of Company to Active , intimating all authorities including Banking Authorities of Company to allow the Company to function its usual business :
- 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;
- 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/-

RAVIKUMAR DURASAMY
MEMBER (TECHNICAL)

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./A.B. 198/252/HDB/2017
निर्णय का तारीख
DATE OF JUDGEMENT...19.11.2017
प्रति तैयार किया गया तारीख
COPY MADE READY ON...5.1.2018