IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD

CA.No.247/252/HDB/2017
U/s 252 of the Companies Act, 2013

In the matter of:

1. Binoy Koshy
S/o. Koshy Abraham
Aged about 40 years,
R/o. 13-1-82/103, Moti Nagar,
Balnagar, Hyderabad-18.

2. Vineela Balla
W/o. Binoy Koshy
Aged about 36 years,
R/o. 13-1-82/103, Moti Nagar,
Balnagar, Hyderabad-18. ... Applicants

Versus

1. Research City Business Solutions Private Limited
15-25-576/G2, Ananda Nilayam, MIG II-576
5thPhase, KPHB Colony, Hyderabad-72.

2. The Registrar of Companies
For Andhra Pradesh & Telangana
2nd Floor, Corporate Bhawan,
Near- Central Water Board,
GSI Post, Nagole, Badlaguda,
Hyderabad – 500 068 ...Respondents

Date of Order: 29.12.2017

CORAM

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

Parties / Counsels Present
For the Appellant: Mr. V. Venkata Rami Reddy, Advocate

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

Per: Rajeswara Rao Vittanala, Member (Judicial)

ORDER

1. The present Company Application bearing CA No. 247/252/HDB/2017, is filed by Binoy Koshy and Another, under Section 252(3) of the Companies Act, 2013, R/w Rule - 87A of the National Company Law Tribunal (Amendment) Rules, 2017, by inter-alia seeking directions to Registrar of Companies (R-2) for restoration of the name of the applicant in the Register of Companies, to place the 1st Respondent and all other persons in the 1st Respondent such as 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 Register of Companies etc.

2. Brief facts, leading to filing of this present Application, are as follows:-

   (a) RESEARCH CITY BUSINESS SOLUTIONS PRIVATE LIMITED (hereinafter referred to as the Company) was incorporated under the Companies Act, 1956 on 11th September, 2012 as a Private Limited Company with the Registrar of Companies, Hyderabad. The Company is in the Business Consultancy/ Advisory business as permitted by Law.

   (b) The Authorized Share Capital of the Company is Rs.1,00,000/- (Rupees One Lakh only) divided into 10,000 (Ten Thousand) Equity Shares of Rs.10/- (Rupees Ten only) each. Its Issued, Subscribed and Paid-up Share Capital is Rs. 1,00,000/- (Rupees One Lakh only) divided into

10,000 (Ten Thousand) Equity Shares of Rs.10/- (Rupees Ten only) each.

(c) The Company is having 2 (Two) Shareholders as on the date of this Application. All the 2 Applicants are the promoter shareholders who are having 100% shareholding together. The list of present shareholding of the 1st Respondent Company is as under:

S	Name	No of	% of
1	Binoy Koshy	5000	50%
2	Vineela Balla	5000	50%
TOTAL		10,000	100%

(d) ROC has struck off the name of the 1st Respondent Company, which has been displayed in the Master data maintained by the Ministry of Corporate Affairs. Prior to Strike Off the name of the Company, ROC has issued the following notices in the manner described there under:

i. The Applicants and the Company has not received notice in the Form STK-1 pursuant to sub-section (1) and (2) of Section 248 of the Companies Act, 2013.

ii. ROC has displayed a Notice in Form STK-5 in the portal maintained by the Ministry of Corporate Affairs vide No. ROC/Hyderabad/STK-1/Revised dated 05.05.2017.

iii. ROC has displayed another Notice in Form STK-7 in the portal maintained by the Ministry of Corporate Affairs vide No.

ROC(H)/ 248(5) / STK-7/ 2017 dated 21.07.2017.

(e) The Directors of the Company were under the impression that the Annual Returns and Financial Statements for the year 2012-13, 2013-14, 2014-15 and 2015-16 can be filed with the Registrar of Companies with additional fee as contemplated under Section 92 and 137 read with Section 403 of the Companies Act, 2013 during the month of September, 2017 prior to conducting the forth coming Annual General Meeting. Other than the said reason, there was no intentional delay on part of the Company and its Directors in complying with the provisions of the Companies Act, 2013.

f. The Directors have come to know that ROC has struck off the name of the 1st Respondent Company, from the Register of Companies. The Applicants being the Promoter shareholders and Directors understood the fact of striking off from the register while trying to file the said returns during the second week of September, 2017. The Master data available in the Portal of MCA is displaying that the name of the Company is Struck Off from the register from which only the Applicants have come to know about the said Strike Off. The Company has to file the returns for the financial years 2014-15 and 2015-16.

g. The Company is carrying out its business successfully from the date of its incorporation and is conducting the Meetings of Board of Directors as well as 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. The Company has filed its Income Tax Returns for the Assessment Years 2014-15, 2015-16 and 2016-17 as well.

h. It is submitted that none of the Creditors/ Shareholders or any person/persons or any Body Corporate at large will be prejudiced if the name of the 1st Respondent Company is restored in the Register of Companies maintained by the Registrar of Companies.

i. The Company has not deposited any extra money during demonetization of Rs. 500/- and Rs. 1000/- notes in its bank Accounts after 07th November 2016 except the routine money of the business transactions from time to time.

j. The Bank Accounts of the 1st Respondent Company were freezed from doing transactions, which is affecting the business of the Company.

k. Therefore, the present appeal/application is filed by seeking to restore the Company, by seeking the reliefs stated as supra.

3. Heard Mr. V. Venkatarami Reddy, learned counsel for the Petitioner and . Ramesh Chandra Mishra, ROC, and also carefully perused all the documents filed along with ROC report. Ref No. ROCH/LEGAL/SEC252/82994/Research City/ STACK/ 2017/2301 dated 16.11.2017.

4. The learned counsel for the Appellant/Applicant, while reiterating all the contentions raised in the Company Application, further submitted that, apart

from the lacunae's as pointed out in this application, the Company is willing to file all its pending statutory returns with the ROC along with prescribed/addl. fees. He further submit that if the name of Company is not restored to original status, the Company, its employees, and their families apart from the Public, would suffer irreparable loss and injury. Therefore, he prayed the Tribunal to take a lenient view by condoned the delay in the filing statutory returns, and it may be permitted to file the same within short time and allow the Application as prayed.

5. 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."*

6. Mr. Ramesh Chandra Mishra, ROC by reiterating the averments made in his report Ref. No. ROCH/LEGAL/SEC252/82994/Research City/ STACK/ 2017/2301, dated 16.11.2017, has further 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. However it is submitted that the impugned notices are issued strictly in accordance with law.

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 realization 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 will strike off a company 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 Companies is in consultancy and advisory business and several people render service in the Company. Since the Corporate sector contributing major employment to the people of India, the Company should be permitted to function on the principle of ease of doing business. 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 to workers/employees getting 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 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 that application has been filed properly by an authorized person on behalf of the Company, it is within limitation and it is carrying on business even at the time of impugned action, and it has suitably explained the reasons for not filing required documents with Registrar of Companies, which ultimately led to impugned action.

10. The Ministry of Corporate Affairs has issued a notification dated 26th 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 confers 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 facie 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 the required documents in compliance with law along with prescribed/additional fee 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 in the Business Consultancy/ Advisory business as permitted by Law, 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 stated that it can be considered subject to compliance of statutory provisions and undertaking etc.

13. In the 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.247/252/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 and take all consequential actions like change of company's status from 'strike off' to Active (for e-filing), to restore and activate the DINs, to intimate the bankers about restoration of the name of the company so as to defreeze its accounts.

    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 30,000/- (Rupees Thirty thousand only) through online payment in www.mca.gov.in under miscellaneous fee by mentioning particulars as "payment of cost for revival of company pursuant to orders of Hon'ble NCLT in CA No.247/252/HDB/2017".

5) The applicant is directed 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)

G. Anantha Lakshmi
For Dy. Regr./Asst. Regr/Court Officer/
National Company Law Tribunal, Hyderabad Bench

प्रमाणित प्रति
CERTIFIED TRUE COPY
केस संख्या
CASE NUMBER C.A.No.247/252/HDB/2017
निर्णय का तारीख
DATE OF JUDGEMENT 29.12.2017
प्रति तैयार किया गया तारीख
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