

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

CA.No.270/252/HDB/2017
U/s 252 of the Companies Act, 2013

In the matter of:

1. Durga Krishna Prasad Pamu
S/o. Ganga Raju Pamu
R/o. 13-1-57/20/6/1, Avanthi Nagar
Mothi Nagar, Kukatpally
Hyderabad-18

2. Pamu Lavanya
W/o. Durga Krishna Prasad
R/o. 13-1-57/20/6/1, Avanthi Nagar,
Mothi Nagar, Kukatpally,
Hyderabad-18

.... Applicants

Versus

1. SIRI SHELTERS PRIVATE LIMITED
13-1-57/20/6/1, Avanthi Nagar Mothi Nagar,
Kukatpally,
Hyderabad-18

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
Mr. Josekutty V.E, DRoC



Per: Rajeswara Rao Vittanala, Member (Judicial)

ORDER

1. The present Company Application bearing CA No. 270/252/HDB/2017, is filed by Durga Krishna Prasad Pamu and Pamu Lavanya, 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 Company and all other persons in the 1st Respondent Company such as Shareholders, Employees and all other related to the Company 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 the present Company Application, are as follows:-
 - (a) The Applicants are the Promoters and shareholders of the Respondent No.1 Company who are holding 100 % shares together.
 - (b) SIRI SHELTERS PRIVATE LIMITED (hereinafter referred to as the Company) was incorporated under the Companies Act, 1956 on 03th August, 2007 as a Private Limited Company with the Registrar of Companies, Hyderabad. The Company is in the Construction Business.
 - (c) The Authorized Share Capital of the 1st Respondent Company is Rs.1,00,000/- (Rupees OneLakh only) divided into 10,000 (Ten Thousand) Equity Shares of Rs.10/- (Rupees Ten only) each. The Issued, Subscribed and Paid-up Share Capital of the 1st



Respondent 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.

- (d) The 1st Respondent 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 Share	% of holding
1	Durga Krishna Prasad Pamu	5000	50%
2	Pamu Lavanya	5000	50%
TOTAL		10000	100%

- (e) 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:

- The Applicants and the 1st Respondent 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.
- 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.
- 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



- (f) The Directors of the Company were under the impression that the Annual Returns and Financial Statements for the years 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.
- (g) 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 the name of the Company has Struck Off from the register from where the Applicants came to know about the said Strike Off. The Company has to file the returns for the financial years 2013-14, 2014-15 and 2015-16.
- (h) It is submitted that, the 1st Respondent 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 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. It is submitted that



the 1st Respondent Company has held its Annual General Meetings for the Financial Years ended 31st March 2014, 31st March 2015 and 31st March 2016 on 30.09.2014, 25.09.2015 and 30.09.2016 respectively. The Company has filed its Income Tax Returns for the Assessment Years 2014-15, 2015-16 and 2016-17 as well.

- (i) It is submitted that, the 1st Respondent Company has earned a revenue of Rs. 1,42,93,000/- (One Crores Forty Two Lakhs Ninety Three Thousand Only) for the FY 2013-14, Rs. 3,25,02,551/- (Three Crores Twenty Five Lakh Two Thousand Five Hundred and Fifty One Only) for the FY 2014-15, Rs. 5,47,74,834/- (Five Crores Forty Seven Lakh Seventy Four Thousand Eight Hundred and Thirty Four Only) for the FY 15-16.
- (j) The Balance Sheet showing the Assets and Liabilities of the 1st Respondent Company as on 31.03.2014, 31.03.2015 and 31.03.2016 is furnished hereunder:

EQUITY AND LIABILITIES	31.03.2016	31.03.2015	31.03.2014
Shareholders' Funds	Rs.	Rs.	Rs.
Share Capital	100000	100000	100000
Reserves and Surplus	1097496	273635	(587715)
Share Application Money	0	0	0
Non-Current Liabilities:			
Long-term borrowings	7588276	229124	8182885
Other long term liabilities	10000	0	0
Long-term Provisions	1366186	0	0
Current Liabilities:			
Short-term borrowings	0	0	0
Trade Payables	2301815	0	0
Other current liabilities	186644	0	725689
Short-term Provisions	579220	0	95000
TOTAL	13229637	2602759	8515859
ASSETS:			
Non-current Assets			

Fixed Assets:			
Tangible assets	2702168	1072258	1394572
Capital work in process	0	0	0
Long-term loans and advance	92000	92000	92000
Non Current Investments	0	0	0
Deferred Tax Asset(Net)	0	0	0
Other Non-current Assets			
Current Assets			
Inventories	9640000	128560	665485
Trade Receivables	0	0	0
Cash & cash equivalents	795469	1309941	363803
Short-term loans & advances	0	0	0
Other current assets			
TOTAL	13229637	2602759	8515859

- k) 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.
- l) Since the 1st Respondent Company is having substantial income and is having continuous Business, this application has been filed under Section 252(3) of the Companies Act, 2013 seeking restoration of the name of the 1st Respondent Company to the Register of Companies maintained by ROC.
- m) It is submitted that the since 1st Respondent Company was carrying the business at the time of its name being struck off, it is just that the name of the 1st Respondent Company be restored to the Register of Companies.
- n) The 1st Respondent 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.

- o) The Bank Accounts of the 1st Respondent Company have been freezed from transactions, which act of the Banks is affecting the business of the Company.



3. Heard Mr. V. Venkatarami Reddy, learned counsel for the Petitioner and Shri. Ramesh Chandra Mishra, ROC, and also carefully perused all the documents filed along with RoC report. Ref No.ROCH/ LEGAL. SEC252/ 55011/Siri Shel/STACK/2017, dated 28.12.2017.
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 submits 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 condoning the delay in the filing of 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 Purushottamdas and Anr. (Bulakidas Mohta Co.P Ltd.) Vs. Registrar of Companies, Maharashtra, & Ors. (1986) 60 Comp Case 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 while reiterating the averments made in his report Ref. No. ROCH/LEGAL/SEC252/55011/Siri Shel/STACK/2017, dated 28.12.2017, 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 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 will strike off a company from the Register of companies. By reading of averments made in the application and the submissions 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 realization 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, daily labour and their families and public employment, the case has to be considered favourably. The employees, labours 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. 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 Real Estate and constructions, mega ventures, project contractors etc. 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.

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.270/252/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.270/252/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 Lakshminarayanan
 for Dy. Regr./Asst. Regr./Court Officer/
 National Company Law Tribunal, Hyderabad Bench

प्रमाणित प्रति
CERTIFIED TRUE COPY
 केस संख्या
 CASE NUMBER CA.No.270/252/HDB/2017
 निर्णय का तारीख
 DATE OF JUDGEMENT 29.12.2017
 प्रति तैयार किया गया तारीख
 COPY MADE READY ON 6.2.2018