

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

CA No. 274/252/HDB/2017

U/S 252(3) of the Companies Act, 2013

R/w NCLT, 2016

Rule - 87A of NCLT (Amendment) Rules, 2017

**In the matter of**

1. Boireddy Venkata Satish  
R/o F.No.203,  
IInd Floor, Emerald Lake Residency,  
H.No.9-3-57, Old Bowenpally,  
Secunderabad, Telangana -500009

2. Baireddy Venk ata Rajesh  
R/o H.No.1-1-230/3/2, 2<sup>nd</sup> Floor  
Vivek Nagar, Chikkadpally  
Hyderabad, Telangana-500027

.... Applicants

**Versus**

1. Gearup Builders Private Limited  
Flat No. 302, H.No.1-1-742,  
Tirumala Srinivasa Nilayam  
GandhiNagar Hyderabad  
Telangana, India- 500020

2. The Registrar of Companies  
Andhra Pradesh & Telangana,  
2<sup>nd</sup> Floor, Corporate Bhavan  
Bandlaguda, Nagole  
Hyderabad, Telangana – 500068

.... Respondents

Date of order: 29.12.2017

**Coram:**

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

**Parties / Counsels Present:**

For the Applicant: Shri V.Venkata Rami Reddy,  
Advocate

For the Respondent: Shri R.C. Mishra, RoC  
Shri Josekutty V.E, DRoC

**Per: Rajeswara Rao Vittanala, Member (Judicial)**



**ORDER**

1. The present Company Application bearing CA No. 274/252/HDB/2017, is filed by Boireddy Venkata Satish & Another, under Section 252(3) of the Companies Act, 2013 R/w National Company Law Tribunal Rules, 2016 and Read with Rule - 87A of the National Company Law Tribunal (Amendment) Rules, 2017, by inter-alia seeking to set aside the order of the 2<sup>nd</sup> Respondent with regard to striking off the name of the 1<sup>st</sup> Respondent Company from the register of companies; restoring name of the 1<sup>st</sup> Respondent Company etc.



2. Brief facts, leading to filing of the present Company Application, are as under:-

- (a) GEARUP BUILDERS PRIVATE LIMITED (hereinafter referred to as the 1<sup>st</sup> Respondent or the Company) was incorporated under the Companies Act, on 11<sup>th</sup> May, 2012 as a Private Limited Company with the Registrar of Companies, Hyderabad having its registered office at the address shown in the cause title of this application. The Company is established with main object of carrying on the business of Builders, Developers, Construction and infrastructure.
- (b) The Authorized Share Capital of the Company is Rs.9,00,000/- (Rupees Nine Lakhs Only) divided into 90,000 (Ninety Thousand) Equity Shares of Rs.10/- (Rupees Ten Only) each. The Issued, Subscribed and Paid-up 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.

- (c) The 1<sup>st</sup> Respondent Company has 2 (Two) Shareholders as on the date of this application.

Name of the Shareholder	No of Shares	% of Holding
Boireddy Venkata Satish	5,000	50%
BaireddyVenkatarajesh	5,000	50%
Total	10,000	100%

- (d) The details of Directors including the date of appointment and DIN numbers as on the date of this petition are furnished hereunder:

DIN	Name	Designation	Date of Appointment
05274487	Boireddy Venkata Satish	Director	11.05.2012
05274553	Baireddy Venkatarajesh	Director	11.05.2012



- (e) It is submitted that the ROC has displayed three lists in MCA website with the details of the names of the directors who were disqualified as directors. It is submitted that the names of the directors of the Company are found in the lists displayed by the ROC.
- (f) It is further submitted that, the Company is Carrying out its business 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. The Company has filed its returns for the 1<sup>st</sup> financial year ended 31<sup>st</sup> March, 2013 with Registrar of Companies, Hyderabad.



- (g) The Directors have come to know that ROC has struck off the name of the 1<sup>st</sup> Respondent Company, from the Register of Companies. The Applicants being the Promoter shareholders and Directors understood the said fact of striking off from the register while trying to file the said returns during September, 2017. The Master data available in the Portal of MCA is disclosing that the name of the Company is Strike Off from the register from which only the Applicants have come to know about the said Strike Off.
- (h) The Company has to file the returns for the financial years 2013-14, 2014-15 and 2015-16. The Company is having substantial assets and liabilities and is filing the income tax returns regularly.
- (i) The Applicants and the 1<sup>st</sup> 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
- (j) Further, the Learned Counsel for the Applicant submit that the Directors of the Company have consulted the legal experts and on the opinion it was thought that the Annual Returns and Financial Statements for the year 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 forthcoming 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.

- (k) Due to inadvertence, beyond the reasons in the control of the directors, the projects taken up by the company couldn't materialized. Most of the construction projects were hit with financial constraints due to the division of Andhra Pradesh State into Two states as Telangana & Andhra Pradesh as market conditions have seen the downfall. Due to the above said reasons, though the statutory compliances such as conducting of Board Meetings as well as General Meetings were taken place in time, the Directors couldn't file the Balance Sheet (Annual Accounts and the Annual Returns pertains to the years as at 31/03/2014, 31/03/2015 and 31/03/2016 within the prescribed due dates of the filing of the said returns. It is submitted that the Company has held its Annual General Meetings for the Financial Years ended 31st March 2014, 31st March 2015, and 31st March 2016 on 29th September 2014, 30th September 2015 and on 30th September 2016 respectively.

- (l) The company has taken up a residential project and due to the dull market conditions, some of the flats which are semi-finished are yet to be



sold. Therefore, if the company is not revived, there will be an irreparable loss to the stakeholders and to the customers.

(m) It is further submitted that none of the Creditors/ Shareholders or any person/ persons or any Body Corporates at large will be prejudiced if the name of the Company is restored in the Register of Companies maintained by the Registrar of Companies. Moreover, if the Company's name is not restored, there is an irreparable loss caused to the applicant company, stake holders including employees and their families and customers who booked flats for their residential purpose.

(n) It is submitted that the Company was carrying the business at the time of its name being struck off, carrying on business operations as explained supra and therefore it is just that the name of the Company be restored to the Register of Companies.

3. Heard Shri V. Venkata Rami Reddy, Learned Counsel for the Applicant Company and Shri R.C. Mishra, Registrar of Companies.

4. The Learned Counsel for the Applicant, while reiterating the averments made in the Company Application, has further submitted that the notices were not received by its Directors. The Company and its Directors are willing to file all the pending returns with regular fees / additional fees within time stipulated by this Tribunal. He has also submitted that the Applicant Company is involved in construction business. The Company is giving employment to so many people on casual basis. If the





name of the Company is struck off, there would be irreparable loss to all stakeholders / customers including employees and their families. Therefore, he submit that this Tribunal may condone the delay in filing the impugned annual returns and may be permitted to file the same within the stipulated time, by exercising the powers conferred on the Tribunal under Companies Act, 2013.

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/SEC 252/ 080859/ Gearup/ STACK/2017 Dated 28.12.2017, has further asserted 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.

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:
8. 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 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.*



As stated supra, there is a prescribed procedure under the Act as to how the Registrar of Companies has to strike off from the Register of companies. By reading the 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 duty bound to follow proviso 6 of section 248, which mandates the Registrar of Companies to satisfy himself that sufficient provisions have 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.



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 Company, it is within limitation, 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 26<sup>th</sup> 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 facie 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 but the only 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 is 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 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 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 I have considered the pleadings of both the parties along with extant provisions of Companies Act, 2013. The Learned Counsel for the Applicant Company further submits that by virtue of impugned action of the RoC, the financial transactions came to a standstill by freezing of bank account.
- 14 It is not in dispute that the impugned action was taken by the RoC strictly in accordance with law. However, in order to ease of doing business, it is necessary to facilitate the Company to function its normal business activities in accordance with Articles of Memorandum of Association and it is nobody's case that by restoring the Company, it would render any prejudice to any of the parties.
- 15 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

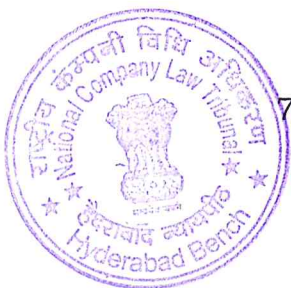
the Register of companies maintained by the Registrar of Companies. Therefore, the Company application deserves to be allowed, however, subject to filing all pending returns, Annual returns, Balance sheets, statements etc., along with prescribed and addl. fee under law. And also subject to giving undertaking that they would not resort to such type of violations in future.

- 16 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.274/252/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 30 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](http://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.274/252/HDB/2017".
- 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, the 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.



8d/-  
**RAJESWARA RAO VITTANALA**  
**MEMBER (JUDICIAL)**

*G. Anandhas Mukundhan*  
 for Dy. Regr./Asst. Regr./Court Officer/  
 National Company Law Tribunal, Hyderabad Bench

प्रमाणित प्रति  
**CERTIFIED TRUE COPY**  
 केस संख्या  
 CASE NUMBER CA No. 274/252/HDB/2017  
 निर्णय का तारीख  
 DATE OF JUDGEMENT 29.12.2017  
 प्रति तैयार किया गया तारीख  
 COPY MADE READY ON 12.2.2018