

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

CA No. 241/252/HDB/2017

U/s 252(3) of the Companies Act, 2013
R/w NCLT Rules, 2016 &
Rule - 87A of NCLT (Amendment) Rules, 2017

In the matter of

Anblick Solutions Private Limited
Maruthi Plaza, Plot no: 192/95-A
Road no-5 Patrika Nagar
Madhapur, Hyderabad
Telangana - 500081

... Applicant



Versus

The Registrar of Companies
Andhra Pradesh & Telangana
2nd Floor, Corporate Bhavan
Bandlaguda, Nagole
Hyderabad, Telangana - 500068

... Respondent

Date of order: 28.12.2017

Coram:

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

Counsels/Parties present:

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

For the Respondent: Shri R.C. Mishra, Registrar of
Companies

Per: Rajeswara Rao Vittanala, Member (Judicial)

ORDER

1. The present Company Application bearing CA No.241/252/HDB/2017 is filed by Anblick Solutions Private Ltd (Applicant), under Section 252(3) of the Companies Act, 2013 Read with 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 Respondent with regard to striking off the name of the Respondent Company from the register of companies; restoring name of the Respondent Company etc.

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

- (a) Anblick Solutions Private Limited (hereinafter referred to as The Applicant) was incorporated under the Companies Act, 1956 on 18th April, 2006 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 to undertake the designing and development of the systems and application software either for its own use or for sale in India and overseas. etc.
- (b) The Authorized Share Capital of the Applicant is Rs. 3,00,000/- (Rupees Three Lakh Only) divided into 30,000 (Thirty Thousand) Equity Shares of Rs.10/- (Rupees Ten Only) each. The Issued, Subscribed and Paid-up Share Capital of the Applicant is Rs. 2,50,000/- (Rupees Two Lakh Fifty Thousand Only) divided into 25,000 (Twenty Five Thousand) Equity Shares of Rs.10/- (Rupees Ten Only) each.
- (c) The Shareholders list of the Applicant Company as super scribed in the Balance Sheets made as on 31.03.2016.



S. no	Name of the Shareholder	Number of Shares	Percentage of Shares
1.	K. Satyanarayana	4,000	16%
2.	A. Sitalakshmi	1,000	4%
3.	K. LeelaPrasad	5,000	20%
4.	MARUTHITECH LLC	15,000	60%
	Total	25,000	100%

- (d) The details of Directors as per the Master data maintained by the Ministry of Corporate Affairs including their date of appointment and DIN numbers as on the date of this Application are furnished hereunder:

S.N	DIN	Name	Designation	Date of Appointment
1	01619429	Leela Prasad Kanakamedala	Director	25/05/2006
2	01638459	Sitalakshmi Adusumilli	Director	18/04/2006
3	01845196	Satya Narayana Kadiyala	Director	18/04/2006
4	02224766	Vamsi Krishna Kadiyala	Director	04/07/2008



- (e) It is submitted that Mrs. Sitalakshmi Adusumilli, Mr. Satya Narayana Kadiyala and Mr. Vamsi Krishna Kadiyala, Directors of the Applicant Company are not disqualified under section 164(2)(a) of the Companies Act, 2013. One of the Director Mr. Leela Prasad Kanakamedala is disqualified under section 164(2)(a) of the Companies Act, 2013 from 01.11.2016 to 31.10.2021 for non-filing of annual returns in M/s. Gowthama Software Services Private Limited and the same has been reflected in the Disqualified Directors list published by Ministry

of Corporate Affairs. However, the Ministry of Corporate Affairs/ ROC has not made the Directors Disqualified for non-compliance in the applicant company.

- (f) RoC has struck off the name of the Applicant Company, from Register of Companies maintained by ROC, under Sub Section (1), (4) and (5) of Section 248 of the Companies Act, 2013 Notice in Form No.STK-1 vide No. ROCH/248(1)/Removal/9899/2017 dated 27.03.2017, Public Notice in Form No.STK-5 vide no. ROC/HYDERABAD / STK-1 / revised dated 05.05.2017 and Form No.STK-7 vide no. ROC (H)/248(5)/STK-7/2017 dated 21.07.2017. The said notices have given an effect of Striking off of the Applicant Company. The Company's Master Data maintained by the ROC in the MCA portal is also showing the company status as "Strike Off".
- (g) It is submitted that, 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 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 up to the financial year ended 31st March, 2014 with Registrar of Companies, Hyderabad. The Directors thought that they can file the Annual Returns and Financial Statements for the year 2014-15 and 2015-16 with additional fee as contemplated under



Section 92, 137 read with Section 403 of the Companies Act, 2013 otherwise there is no intentional cause for such non-filing.

- (h) It is submitted that the Company has held its Annual General Meetings for the Financial Years ended 31st March 2015 and 31st March 2016 on 30th September 2015 and on 30th September 2016 respectively.
- (i) It is submitted that, the Company has earned a revenue of Rs.74,731,659.71/- and Rs.83,405,504.09/- during the financial years 2014-2015 and 2015-2016 respectively.
- (j) The Balance Sheet showing the Assets and Liabilities of the Applicant Company as on 31.03.2015 and 31.03.2016 is furnished hereunder:



EQUITY AND LIABILITIES	31.03.2016	31.03.2015
Shareholders' Funds	Rs.	Rs.
Share Capital	2,50,000	2,50,000
Reserves and Surplus	4933865.36	7086385.71
Non-Current Liabilities:		
Long-term borrowings	3370335	3847854.50
Deferred Tax Liability (net)	-2429965	-1415486.00
Long-term Provisions	0	0
Current Liabilities:		
Short-term borrowings	0	0
Trade Payables	12281884.59	12409864.81
Other current liabilities	477519.50	471066.05
Short-term Provisions	9388837.05	5603453.29
TOTAL	28272476.50	3249138.36
ASSETS:		
Non-current Assets		
Fixed Assets:		
Tangible assets	18415463.08	25109689.34
Capital work in process	0	0
Long-term loans and advance	496444.00	496444.00
	0	0
Non Current Investments	0	0
Deferred Tax Asset(Net)	0	0
Other Non-Current Assets		

Current Assets		
Inventories	0	0
Trade Receivables	2653371.19	2074526.61
Cash & cash equivalents	6375171.37	4475870.97
Short-term loans & advances	332026.86	337607.54
Other current assets	0	0
TOTAL	28272476.50	32494138.46

- (k) The Company is regular in paying its Income Tax and filing the returns with the Income Tax Department. The details of Income tax paid for the last three Assessment years are furnished hereunder:

Particulars (Assessment Year)	2015-16 (Rupees)	2016-17 (Rupees)
Income Tax (AY)	13,23,018	8,84,327

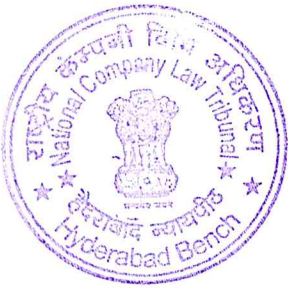


The Applicant Company is regular in paying contribution to Provident Fund (Employer and Employee) and Service Tax with prescribed authorities.

- (l) It is submitted that, the Company has earned substantial revenue which includes foreign exchange from its operations to an extent of Rs.7,12,46,048/- and Rs.7,12,46,048/- during the financial years 2014-2015 and 2015-2016 respectively.
- (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.
- (n) 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 since the company is planning to enter into the business of the construction of various residential accommodations to various groups of people on affordable rates.

- (o) It is further submitted that the Annual Accounts and the Annual Returns pertaining to the two financial years i.e. 2014-15 and 2015-16 only are to be filed. The applicant shall be able to complete its filing of pending Annual Returns and Financial Statements, upon granting of the prayers stated in this application, and when the name is restored in the Register of Companies maintained by the ROC.
- (p) 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 The Applicant is in the Software Development and Consultancy Business. The Applicant is a profit making company.
- (q) The Applicant 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. But the Bank Accounts of the Applicant Company have been freezed from transactions, which act of the Banks is affecting the business of the Company.
- (r) The Applicant Company ensures the Statutory Compliance with the applicable provisions of the



Companies Act, 2013 in time, in future, without any further delay.

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 designing and development of the systems and application software. The Company is giving employment to so many people. 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 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 by reiterating the averments made in his report Ref. No. ROCH/LEGAL/SEC 252/ 49899/ Anblick Solutions/STACK/2017 Dated 24.11.2017, 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 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:
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.



8. 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, their families and public employment, the case has to be considered favourably. 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 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 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 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 to the business of undertaking designing and development of the systems and application 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.241/252/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 under miscellaneous fee by mentioning particulars as "payment of cost for revival of company pursuant to orders of Hon'ble NCLT in CA No.241/252/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.



Sd/-
RAJESWARA RAO VITTANALA
MEMBER (T)

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

प्रमाणित प्रति
CERTIFIED TRUE COPY
 केस संख्या
 CASE NUMBER *CA No. 241/252/HDB/2017*
 निर्णय का तारीख
 DATE OF JUDGEMENT *28.12.2017*
 प्रति तैयार किया गया तारीख
 COPY MADE READY ON *12.2.2018*