

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

CA No. 276 /252/HDB/2017
U/s 252 of the Companies Act, 2013

In the matter of

1. Kothamasu Rammohan Gupta
**Share holder of SUNRISE UNIQUEINFRA PROJECTS
INDIA PVT. LTD.**
Door No.9-142/5, Annamraju Nagar
Opp.Astalakshmi Temple, Kommadi
Visakhapatnam-530 048

2. Rambha Gopinath Chandra Gupta,
**Share holder of SUNRISE UNIQUEINFRA PROJECTS
INDIA PVT. LTD.**
Flat No.7, III Floor, Amrutha Villa
NGO's colony, Akkayyapalem
Visakhapatnam – 530016
Andhra Pradesh

...Applicants

Versus

The Registrar Of Companies,
2nd Floor, Corporate Bhawan, GSI Post
Tattiannaram, Nagole
Bandlaguda
Hyderabad – 500068

...Respondent

Date of order: 29.12.2017

Coram:

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

Parties /Counsels present:

For the Applicant: Dr. S.V.Ramakrishna along with
Shri Vanshi Krishna, Advocates

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

Shri Jose Kutty VE, DRoC

Per: Rajeswara Rao Vittanala, Member (Judicial)



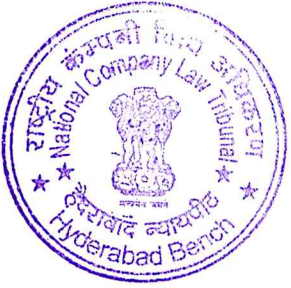
ORDER

1. The present Company Application bearing CA No. 276/252/HDB/2017 is filed by Kothamasu Rammohan Gupta, Rambha Gopinath Chandra Gupta (Applicants herein) in their capacity as shareholders/ members of the Company, **SUNRISE UNIQUEINFRA PROJECTS INDIA PVT. LTD** (herein referred to as "Company") under section 252 of the Companies Act, 2016, by inter-alia seeking to set aside the order of the Respondent with regard to striking off the name of the Company from the register of companies; restoring name of the Company etc.
2. Brief facts, leading to filing of the present company application, are as under:-
 - (1) Sunrise Uniqueinfra Projects India Pvt. Ltd was incorporated on 10th October, 2012 as a private limited company to carry on the business of developing infrastructure projects in general including construction of houses, apartments, development of layouts etc.
 - (2) The Company is a closely held company having only two shareholders who Applicants herein are holding entire 100% share capital. The filings of Financial statements and Annual Returns since incorporation viz., for four financial years 2012-13 to 2015-16 were unfortunately missed out in filing with ROC due to lack of proper coordination between the staff of the Company and the Statutory Auditors/ Company Secretaries and the promoter directors are under the impression that they were regularly being filed.
 - (3) It is humbly submitted that the Company is a running Company carrying on business, having assets and liabilities. Further, the Company



during the current financial year has taken a fresh development project in VUDA (Visakhapatnam Urban Development Authority) approved lay out at **Lagisettipalem** Village, Aripaka Panchayat, Sabbavaram Mandal, Visakhapatnam. Besides, the Company entered into Development Agreements with owners of individual plots for development of the plots as per the terms and conditions mentioned in the agreements. The individual owners had approached housing finance companies/ banks for loans that have extended financial support to the owners. The moneys are directly credited to the company account of 'SUNRISE UNIQUEINFRA PROJETS INDIA PRIVATE LIMITED' towards cost of development.

- (4) It is further submitted that Corporation Bank, Madhurawada, Visakhapatnam vide its letter bearing No. KYCAML: 87:2017-18 dated 24th October, 2017 informed that the Company bank account No.510101002482982 has been frozen consequent to strike off by ROCs the operations in the account have been stopped. It is humbly submitted that as on the date of freezing of bank account of the Company, there is a balance of Rs.32,80,031/- (Rupees thirty two lakh eighty thousand and thirty one only) which is the advance amounts received from various customers towards their land development and the Company is contractually duty bound to honour its commitments to the customers.
- (5) It is further stated that Non-filing of the above annual returns is neither wilful nor wanton but due to lack of proper coordination between the



staff and the Chartered Accountant/Company Secretary in Practice who were authorised to file the annual returns but somehow missed out inadvertently and the same is deeply regretted.

- (6) It is found from the Master Data of MCA Webportal of the said Company that its status is shown as **"STRIKE OFF"**. However, it is observed from the said webportal that a common Form **No. STK-5** bearing Public notice: ROC/HYDERABAD/STK-1/Revised dated **05.05.2017** publishing names of 24,338 number of companies amongst which the above Company's name appeared at sl.no. 17,951. Similarly, in FORM **No. STK-7** bearing Notice No.ROC (H)/248(5)/STK-7/2017 dated **21.07.2017** out of 20,082 number of companies, the above Company's name is shown at sl.no. 17,379 stating that among other companies, the above Company's name is also struck off the Register of Companies and the said Companies are dissolved.

- (7) It is further submitted that the Respondent's Office mechanically struck off the name of Company from the rolls of the Registrar of Companies, without applying the proper procedure prescribed for striking off the name of the Company in terms of Section 248 of the Companies Act, 2013. No notices in Forms STK-1, STK-5 and STK-7 are served on the Company. Further states that merely relying upon non-filing of certain annual accounts could not be presumed unilaterally as if the company is a defunct company and its name cannot be struck off the Register.



(8) The strike off of name of the Company is fraught with serious violations of contractual obligations to its customers, creditors and debtors from whom it should receive monies in the normal course of business. It is further stated that the multiple collateral damages by way of striking off company's name in ROC register, disqualifying its directors from carrying on the affairs of the companies, also disqualifying them in other companies where there are existing directors leading to multiple litigations in various High Courts and Supreme Court apart from host of litigations in various Benches of NCLT. These are against the public interest and avoidable in nature.

(9) Therefore it is stated that the acts of the RoC are arbitrary, illegal and against the principles of natural justice and deserve to be set aside the FORM NO.STK-5 and FORM NO.STK-7 as sated supra and restore the Company's name to 'active' mode in the Register of Registrar of Companies at Hyderabad in the interest of justice.



3. Heard Dr. S.V. Ramakrishna and Shri Vanshi Krishan, Learned Counsels for the Applicants and Mr. Ramesh Chandra Mishra, ROC, and also carefully perused all the documents filed along with ROC report. Ref No. ROCH/LEGAL/SEC252/ 83533/SUPIPT/STACK/2017 dated 28.12.2017.
4. The Learned Counsel for the Applicants, 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 Company is into business of developing infrastructure projects in general including construction of houses, apartments, development of layouts etc. 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 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/ 83533/SUPIPT/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 applicants 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.

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, 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 applicants 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 business of developing infrastructure projects in general including construction of houses, apartments, development of layouts 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 applicants have filed the present application within prescribed time under law, and also shown sufficient reasons to order Restoration of the name of the Company 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.276/252/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.276/252/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 led 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)

S. Anantho Lakshmi
 for Dy. Regr./Asst. Regr./Court Officer/
 National Company Law Tribunal, Hyderabad Bench

प्रमाणित प्रति
CERTIFIED TRUE COPY
 केस संख्या
 CASE NUMBER... *CA No. 276/252/HDB/2017*
 निर्णय का तारीख
 DATE OF JUDGEMENT... *29/12/2017*
 प्रति तैयार किया गया तारीख
 COPY MADE READY ON... *15/2/2018*