

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

CA 279/252/HDB/2017

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

In the matter of

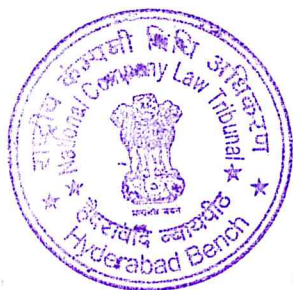
1. Rahul Dugar
R/o. Flat No. 101, K-1, Identity, 9
Panchvati Colony,
Secunderabad – 500009
2. Mahendra Dugar
R/o. Flat No. 101, K-1, Identity, 9
Panchvati Colony,
Secunderabad – 500009
3. Padma Dugar
R/o. Flat No. 101, K-1, Identity, 9
Panchvati Colony,
Secunderabad – 500009
4. Karuna Dugar
Flat 7A, Kuber Garden, 27/1A,
Harish Mukherjee Road,
Kolkata – 700025
5. Divya Dugar
R/o. Flat No. 101, K-1, Identity, 9
Panchvati Colony,
Secunderabad – 500009

.... Applicants

VERSUS

1. MANIKAN CABLES PRIVATE LIMITED
at 4-1-54, Old Bhoiguda, Ranigunj
Secunderabad – 500003
Telangana, INDIA.
- 2) The Registrar of Companies
Andhra Pradesh & Telangana
2nd 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.2: Shri R.C. Mishra, Registrar of
Companies along with Shri
Josekutty V.E, DRoC

Per: Rajeswara Rao Vittanala, Member (Judicial)

ORDERS



1. The Company Application bearing CA No.279/252/HDB/2017 is filed by Rahul Durga & Another, under Section 252(3) of the Companies Act, 2013 Read with National Company Law Tribunal Rules, 2016 and Rule - 87A of the National Company Law Tribunal (Amendment) Rules, 2017 by inter-alia seeking to set aside the order of the 2nd Respondent with regard to striking off the name of the 1st Respondent Company from the register of companies; restoring name of the 1st Respondent Company etc.
2. Brief facts, leading to filing of the present Company Application, are as follows:-
 - (1) MANIKAN CABLES PRIVATE LIMITED (hereinafter referred to as the Company) was incorporated under the Companies Act, 1956 on 06th April 2000 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 in the business of manufacturing of Cables, wires, sleeves & Tubes etc as permitted by Law.

- (2) The Authorized Share Capital of the 1st Respondent Company is Rs.15,00,000/- (Rupees Fifteen Lakhs Only) divided into 1,50,000 (One Lakh Fifty 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.14,75,000/- (Rupees Fourteen Thousand Seventy Five Thousand Only) divided into 1,47,500 (One Lakh Forty Seven Thousand Five Hundred) Equity Shares of Rs.10/- (Rupees Ten Only) each.

- (3) The 1st Respondent Company is having 15 (Fifteen) Shareholders as on the date of this Application. All the Five Applicants are the shareholders holding 78,000 shares of R1 Company constituting 52.88% of paid up share capital. The list of present shareholding of the 1st Respondent Company is as under:

Name of the Shareholder	No of Shares	% of Holding
Mr. Mahendra Dugar	31600	21.42%
Mr. Virendra Kumar Dugar	2500	1.69%
Mrs. Padma Dugar	15500	10.51%
Mr. Narendra Dugar	3500	2.37%
Mrs. Hemlata Moyal	2000	1.36%
M/s Manisons Marketing Pvt. Ltd.	2500	1.69%
Mrs. Karuna Dugar	10000	6.78%
Mr. Virender Kumar Dugar HUF	4500	3.05%
Mr. Pankaj Kumar Dugar	8000	5.42%
Mr. Rahul Dugar	7900	5.36%
Ms. Gunjan Dugar	14000	9.49%
Ms. Chandni Dugar	12500	8.47%



Mrs. Divya Dugar	13000	8.81%
Jai Mata Rani Homes Private Ltd	10000	6.78%
Deep Narayana Management Private Limited	10000	6.78%
Total	1,47,500	100%

- (4) Pursuant to section 164(2) of the Companies Act, 2013 the Directors of the Respondent no.1 Company have been disqualified and they are also the promoter shareholders as explained supra. All the 3 (three) disqualified Directors being the promoter shareholders have filed this Company Application to protect their rights and interest as shareholders and in the interest of the Company, its stakeholders, customers and employees. The details of disqualified 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:



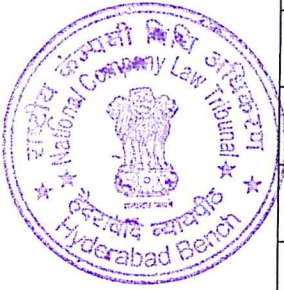
DIN	Name	Designation	Date of Appointment
00831596	Mahendra Dugar	Director	06.04.2000
01969070	Karuna Dugar	Director	07.03.2007
05242779	Padma Dugar	Director	28.03.2003

- (5) 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. The Directors

thought that they can file the Annual Returns and Financial Statements for the year 2011-12, 2012-13, 2013-14, 2014-15 and 2015-16 with additional fee as contemplated under Section 92 and 137 read with Section 403 of the Companies Act, 2013 otherwise there is no intentional cause for such non-filing.

- (6) It is submitted that the 1st Respondent Company has held its Annual General Meetings as follows:-

Sr.No	Financial Year ended	Date of Annual General Meeting
1	31st March, 2012	26 th September 2012
2	31st March 2013	23 rd September 2013
3	31st March 2014	29 th September 2014
4	31st March, 2015	28 th September 2015
5	31st March, 2016	28 th September 2016



- (7) The Balance Sheet of the 1st Respondent Company is showing substantial Assets and Liabilities as on 31st March 2016.
- (8) The Company is regular and punctual in paying its Income Tax and filing the returns, the returns of under Sales Tax Act & VAT and the Rules prescribed there under and other applicable taxes. The details of Income tax paid for the last three years are furnished hereunder:

Income Tax (Assessment Year)	Income Tax (Financial Year)	Date of Filing	Amount of Tax Paid
2012-13	2011-12	27.09.2012	37,588
2013-14	2012-13	30.09.2013	69,000
2014-15	2013-14	16.09.2014	92,928

2015-16	2014-15	30.10.2015	56,049
2016-17	2015-16	17.10.2016	1,26,781

(9) The company is regular in payment of property Taxes and other duties. The company holds a valid "License to work a Factory" issued by the Inspector of Factories, Jeedimetla Circle, Ranga Reddy District. As on the date of filing this Application, there are about 50 employees/workmen employed by the applicant and the wages are paid in accordance with the provisions of Payment of Wages Act and the Rules prescribed there under. The Company is also registered under the provisions of Employees State Insurance Act of 1948 and makes regular contributions to provide certain benefits to employees in case of sickness, maternity and employment injury and to make provision for certain other matters in relation thereto. The Company has migrated from VAT to GST returns and is regularly in filing of GST returns.

(10) It is 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 1st Respondent Company is restored in the Register of Companies maintained by the Registrar of Companies.

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



- i. The Applicants and the 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.
 - ii. ROC has displayed a Notice in Form STK-5 in the portal maintained by the Ministry of Corporate Affairs vide No. ROC/Hyderabad/STK-1/Revised dated 05.05.2017.
 - iii. ROC has displayed another Notice in Form STK-7 in the portal maintained by the Ministry of Corporate Affairs vide No. ROC(H)/248(5)/STK-7/2017 dated 21.07.2017.
12. 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 2011-12, 2012-13, 2013-14, 2014-15 and 2015-16 can be filed with the Registrar of Companies with additional fee as contemplated under Section 92 and 137 read with Section 403 of the Companies Act, 2013 during the month of September, 2017 prior to conducting the forth coming Annual General Meeting. Other than the said reason, there was no intentional delay on part of the Company and its Directors in complying with the provisions of the Companies Act, 2013.
13. The Applicants being the shareholders and Directors understood the said 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 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.

14. The company is in continuous business as on the date of "Strike Off" the name from the Registrar by the Registrar of Companies. The Financial statements/Balance Sheet of the Company reveals the quantum of business and related financial figures thereon.
 15. The Company has to file the returns for the financial years 2011-12, 2012-13, 2013-14, 2014-15 and 2015-16. The Company is having assets and liabilities and is filing the income tax returns regularly.
 16. It is further submitted that the shareholders/promoters will appoint the required number of Directors, as soon as the name of the Company is restored in the Register maintained by the Registrar of Companies, who shall hold office till the regular directors are appointed by the company in the general meeting as permitted under section 167(3) of the Companies Act, 2013.
 17. The Company will ensure 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 the business of manufacturing of cables, wires, sleeves & Tubes. The Company is giving employment to 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 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/ 34197/ Manikan/ STACK/2017/3100 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.

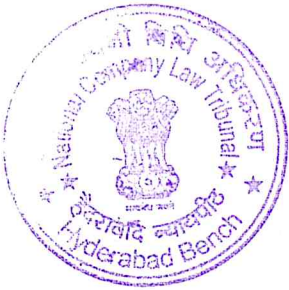
Appeal to Tribunal deals with under Section 252 of the companies'act, which reads as follows:

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:

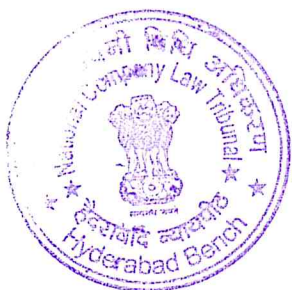
Provided further that if the register is satisfied that the name of the company has been struck off from the register of companies either inadvertently or on the basis of incorrect information furnished by the company or its directors, which requires restoration in the register of companies he may within 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.

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

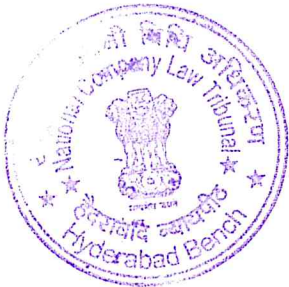


employment, the case has to be considered favourably. The employees, labours are to be paid their wages for the services rendered. And thus, striking off the name of Company would also result in serious repercussions like Debit Freeze accounts of the Company with its Bankers etc. However, the Registrar 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 appellant for the Company pleaded that in view of hardship and in the interest of justice, a lenient view may be taken by the Tribunal

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

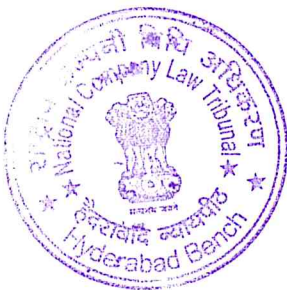
3(3): The notice shall contain the reasons on which the name of the company is to be removed from the Register of companies and shall seek representations, if any against the proposed action from the company and its directors along with the copies of the relevant documents if any, within a period of 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-

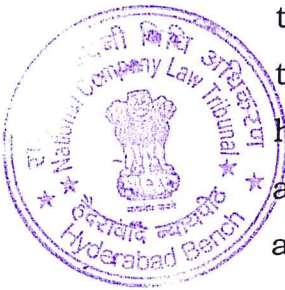
- (I) placed on the official website of the Ministry of corporate affairs on a separate link established on such other website in this regard
- (II) Published in the official Gazette
- (III) Published in English language in leading newspaper and at least once in vernacular language in leading vernacular 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 the business of manufacturing of cables, wires 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.

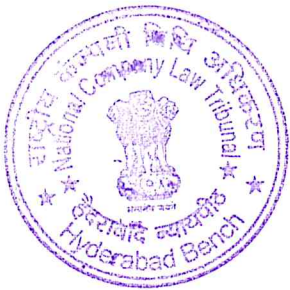
- 14 It is not in dispute that the impugned action was taken by the RoC strictly in accordance with law. However, in order to ease of doing business, it is necessary to facilitate the Company to function its normal business activities in accordance with Articles of Memorandum of Association and it is 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.279/252/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.279/252/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 (JUDICIAL)

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

प्रमाणित प्रति
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केस संख्या
CASE NUMBER. CA 279/252/HDB/2017
निर्णय का तारीख
DATE OF JUDGEMENT. 29.12.2017
प्रति तैयार किया गया तारीख
COPY MADE READY ON. 12.2.2018