

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

CA 22/252/HDB/2018

U/s 252(3) OF THE COMPANIES ACT, 2013
R/w RULE 87A OF THE NCLT (Amendment) Rules, 2017

In the matter of

1. Biyyala Dayakar Rao
R/o Plot 123, Lotus Enclave, Athvelly
Medchal Mandal
Ranga Reddy District – 501401
2. Biyyala Venkata Papa Rao
R/o Plot 123, Lotus Enclave, Athvelly
Medchal Mandal
Ranga Reddy District – 501401 ... Applicants



Versus

1. Yamini Films Private Limited
Flar No.402, Vishnu Elite
Gurumuthy Lane, Begumpet
Hyderabad- 500016 ..Respondent -1
/Company
2. The Registrar of Companies
Andhra Pradesh & Telangana
2nd Floor, Corporate Bhawan
Bandlaguda, Nagole
Hyderabad – 500068 ...Respondent -2

Date of order: 06.02.2018

Coram:

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

Parties / Counsels present:

For the Applicant : Shri Gopinath Surey, PCS

Per: Rajeswara Rao Vittanala, Member (Judicial)

ORDER

1. The present Company Application bearing CA No.22/252/HDB/2018 is filed by Biyyala Dayakar Rao and 01 Another 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-2 with regard to striking off the name of the Respondent No.1 Company from the register of companies; restoring name of the Respondent No.1 Company etc.



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

(a) Yamini Films Private Limited (hereinafter referred to as 'the Company') was incorporated under the Companies Act, 1956, on 17th August 2004, as a private limited company, with the Registrar of Companies, having the Registered Office at Flat 402, Vishnu Elite, Gurumuthy Lane, Begumpet, Hyderabad - 500016. The Company is established to carry on the business of production, distribution and exhibition of films.

(b) The Authorized Share Capital of the First Respondent is Rs.10,00,000/- (Rupees ten lakh only), divided into 10,000 (Ten thousand) equity shares of Rs.100/- (Rupees one hundred only) each. The Issued, Subscribed and Paid-up Share Capital of the First Respondent is Rs.1,05,000/- (Rupees one lakh and five thousand only), divided into 1,050 (One thousand and fifty) equity shares of Rs.100/- (Rupees one hundred only).

- (c) The First Respondent is having 2 (two) shareholders as on the date of this application. The Applicants are the shareholders and are having 100% (One hundred percent) shareholding as per details given below:

No.	Name of the Shareholder	Number of Shares	% of Holding
1.	Biyyala Venkata Papa Rao	630	60%
2.	Biyyala Dayakar Rao	420	40%

- (d) The First Respondent is having four Directors as on the date of application, as per details given below:-

No.	Name of the Director	DIN	Designation	Appt. Date
1.	Biyyala Venkata Papa Rao	02815086	Director	26.09.2006
2.	Vala Sucharitha	07783823	Director	01.05.2017
3.	Biyyala Yamini Rao	07783834	Director	01.05.2017
4.	Billakanti Mallika Rao	07783854	Director	01.05.2017

- (e) It is submitted that the First Respondent has held its Annual General Meetings for the Financial Years ended 31st March 2015, 31st March 2016 and 31st March 2017 on 30th September 2015, 30th September 2016 and 29th September 2017, respectively.
- (f) The Audited Financial Statements of the First Respondent, comprising of Auditors' Report, Balance Sheet, Profit & Loss Statement, and Notes thereto for the Financial Years 2014-15 and 2015-16 are annexed as Annexure D to the Company Application,
- (g) The First Respondent has entered into various agreements with other parties and the same are valid and subsisting as on date. These agreements have material impact on the business of the Company.
- (h) It is further submitted that none of the creditor(s) / shareholder(s) / or any person(s) or anybody corporate(s) at large will be prejudiced if the name of



the First Respondent is restored in the Register of Companies maintained by the Second Respondent. It is further submitted that if the First Respondent's name is not restored, there is an irreparable loss caused to all stakeholders, shareholders, employees and customers including their families since the First Respondent is in the business of production, distribution and exhibition of films with prudent business practices.

- (i) It is further submitted that the Annual Reports and Annual Returns pertaining to the Financial Years 2014-15, 2015-16 and 2016-17 only are to be filed. The First Respondent shall be able to file these upon granting of prayers stated in this application and when the name is restored in the Register of Companies which is maintained by the Second Respondent.
- (j) It is submitted that ROC has struck off the name of the First Respondent from the Register of Companies, which fact has been come to notice of the Applicants during first week of October 2017 when they were trying to file the Annual Reports and the Annual Returns for the Financial Years 2014-15, 2015-16 and 2016-17 with additional fee as contemplated under Sections 92 and 137 read with Section 403 of the Companies Act, 2013. Prior to striking off of the name of the First Respondent through a public notice, in Form STK-7, ROC should have followed due procedure and process of issuing notice, in Form STK-1, which ought to have been served on the addresses of the Directors of the First Respondent through registered post with acknowledgement due or speed post. None of the Directors including the First



Respondent have received the notice in any mode of despatch stipulated under Rules 3(1) and 3(2) of the Companies (Removal of Name of Companies from the Register of Companies) Rules, 2016, read with Section 248(1) of the Companies Act, 2013. ROC ought to have proceeded further only upon ensuring delivery of proper notice through proper mode. Therefore, striking off of name of the First Respondent from the Register of Companies by merely displaying notices in Form STK-5 and Form STK-7 will defy constitutional rights available under various statutes to the Applicants as shareholders and to the First Respondent as legal entity.

- (k) It is further submitted that before striking off of the name of the First Respondent under Sections 248(1), 248(4) and 248(5) of the Companies Act, 2013, ROC ought to have followed the procedure stipulated therein. The First Respondent came to know about issue of public notices by the Second Respondent in Form STK-5 and Form STK-7 only when it was trying to file annual reports and annual returns for the Financial Years 2014-15, 2015-16 and 2016-17 during first week of October 2017 and upon MCA Portal not allowing the First Respondent to file the above documents. Thereafter, upon enquiry, it has come to the knowledge of the First Respondent that the Second Respondent has issued a public notice in Form STK-5, which was displayed in the Portal maintained by the Ministry of Corporate Affairs ('MCA'). It has also come to the knowledge that the Second Respondent has struck off the name of the First Respondent from the Register of Companies by publication in the Gazette with regard to dissolution



in Form STK-7, which was also displayed in MCA Portal. The Company Master Data of the First Respondent maintained on MCA Portal also shows the filing status as 'Strike Off'.

- (l) The First Respondent is having assets and liabilities and is also having valid and subsisting agreements entered with other parties.
- (m) It is further submitted that in addition to the above, as per Section 248(6) of the Companies Act, 2013, the Second Respondent, before passing an order under Section 248(5), shall satisfy himself that sufficient provision has been made for the realization of all amount 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 managing director, director or other persons in charge of the management of the company.
- (n) The First Applicant was disqualified to act as director under Section 164(2) of the Companies Act, 2013, which was also displayed in MCA Portal showing DIN Approval Status as 'Disqualified by RoC u/s 164(2)'.
(o) It is therefore submitted that the Second Respondent has acted mechanically, without application of reasonable mind, decided hastily and without following the prescribed procedure for strike off of the name of the First Respondent. The orders of the Second Respondent are discriminative and against the principles of natural justice and prejudicial to the interest of the Applicants and other stakeholders of the First Respondent.
- (p) In view of the above cited facts, the First Respondent is facing substantial hardship. Since the Company is



having assets and liabilities, this application has been filed under Section 252(3) of the Companies Act, 2013, seeking restoration of name of the First Respondent in the Register of Companies maintained by the Second Respondent.

- (q) It is submitted that the First Respondent was carrying the business at the time of its name being struck off, as explained supra and therefore it is just that the name of the First Respondent be restored to the Register of Companies.
- (r) It is further stated that the First Respondent has not deposited any extra money during demonetization of Rs.500/- and Rs.1,000/- notes in bank accounts during the period from 8th November 2016 to 31st December 2016, except routine money from business transactions from time to time.
- (s) It is prayed that all pending documents, comprising of Annual Reports and Annual Returns, will be filed by the First Respondent with fee and additional fee as prescribed under the provisions of the Companies Act, 2013, as soon as the name is restored in the Register of Companies. The Applicants will ensure that in future the First Respondent will comply with the applicable statutory provisions of the Companies Act, 2013, without any delay.
- (t) The Applicants, being the Promoter Shareholders, will appoint required number of directors, in place of disqualified director(s), as soon as name of the First Respondent is restored in the Register of Companies, who shall hold office till the directors are appointed by the First Respondent in the General Meeting as permitted under Section 167(3) of the Companies Act, 2013.



(u) It is further submitted that the Bank Accounts of the First Respondent have been frozen and the same is affecting the business operations of the First Respondent.

3. Heard Shri Gopinath Surey, Learned PCS for the Applicants and Shri R.C. Mishra, Registrar of Companies.

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 involved in the business of production, distribution and exhibition of films. 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 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/ 43909/ YFPL/ STACK/2018/ Dated 22.01.2018, 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, their families and public employment, the case has to be considered favourably. The employees are to be paid their wages for the services rendered. And thus, striking off the name of Company would also result in serious repercussions like Debit Freeze accounts of the Company with its Bankers etc. However, the Registrar of Companies has failed to see this issue before issuing the impugned Gazette notification, leading to workers/employees getting aggrieved by the impugned action. However, the appellant for the Company pleaded that in view of hardship, a lenient view may be taken by the Tribunal in the interest of justice.

9. As per section 252 (3) as extracted above, a Company, or any member or creditor workman, if they feel aggrieved by striking off its name, can approach the Tribunal by way of application, before expiry of 20 years after date of publication. On being filed an application, the Tribunal can order to restore striking off company on its role, if it is satisfied that the company was, at the time of **its name being struck off, carrying on business or in operation or otherwise it is just** that name of a company be restored to the Registrar of companies.

As narrated supra, it is not in dispute that application has been filed properly by an authorized person on behalf of 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 with 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 production, distribution and exhibition of films 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.

12 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.

13 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.

14 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.

- 15 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. 22/252/HDB/2018 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.22/252/HDB/2018".

- 5) The applicant is permitted to deliver a certified copy of this order with ROC within thirty days of the receipt of copy 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)

G. Anandha kishore
FOV Dy. Regr./Asst. Regr./Court Officer/
National Company Law Tribunal, Hyderabad Bench

प्रमाणित प्रति
CERTIFIED TRUE COPY
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 CASE NUMBER...*CA No. 22/252/HDB/2018*... 2018.
 निर्णय का तारीख
 DATE OF JUDGEMENT...*6.2.2018*...
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