

**NATIONAL COMPANY LAW TRIBUNAL**  
**KOLKATA BENCH**  
**KOLKATA**

Sub: Appeal No.606/KB/2017  
In the matter of  
Regal Infoways Pvt. Ltd.  
Vs.  
Registrar of Companies, Odisha.

**ORDER**

Certain typographical errors in the Order dated 06.02.2018 brought to my notice on today.

This Tribunal has been vested with the power to rectify such mistakes apparent from the order dated 06.02.2018 in terms of Section 420 of the Companies Act, 2013 read with Rule 154 of the NCLT Rules, 2016. Accordingly, the order dated 06.02.18 in Appeal No.606/KB/2017 has been corrected.

The attached amended order dated 14.02.2018 in Appeal No.606/KB/2017 be issued and uploaded.

Sd

(Jinan K.R.)  
Member (Judicial)

*Signed on 14<sup>th</sup> day of February 2018.*

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
KOLKATA**

**Appeal No.606/KB/2017**

**Coram: Shri Jinan K.R., Hon'ble Member (Judicial)**

**IN THE MATTER OF :**

**An Appeal under Section 252(3) of the Companies Act, 2013.**

**IN THE MATTER OF :**

**REGAL INFOWAYS PRIVATE LIMITED**, a Company incorporated under the provisions of the Companies Act, 1956, and having its Registered Office at Plot No.6/502, IRC Village, Nayapalli, Bhubaneswar 751 010, Khurda, Odisha.

.....Appellant/Petitioner

And

**Registrar of Companies**, having its Office at Corporate Bhawan, 3<sup>rd</sup> Floor, Plot No-9 (P) Sector-1, CDA, Cuttack-753014, Odisha.

..... Respondent

**Order Delivered on 14<sup>th</sup> February, 2018.**

**Coram:**

**Jinan K.R., Member (J)**

For the Petitioner/ Appellant: Mr. DVR MURTY FCA

Sd

## ORDER

**Per Jinan K R, (Member (J))**

1. One of the authorised director/shareholder of M/s **Regal Infoways Private Limited** filed this application in the present appeal under Section 252(3) of the Companies Act, 2013 seeking restoration of the name of the petitioner company which has been struck off by the Registrar of Companies, Odisha.

2. **Regal Infoways Private Limited** was incorporated on 03.04.2009 as a Private Limited Company, having its registered office, as per the Master Data in Plot no-N-6/502, IRC Village, Nayapalli, Bhubaneswar-751010, Khurda, Odisha, India, within the jurisdiction of this Tribunal.

3. The Brief facts of the case leading to the present appeal, are as follows:

(i) **Regal Infoways Private Limited** (hereinafter referred to as the 'Appellant Company') is a private Limited Company and was incorporated on 03.04.2009 in the State of Odisha.

(ii) The authorised share capital of the company is Rs.2,00,000/(Rupees two Lakh only) divided into 20,000 (Twenty Thousands only) equity shares of Rs.10/-(Rupees Ten only) each and with power to increase or reduce the capital.

Sd

(iii) The main objects of the Company, in brief can be disclosed from the Memorandum and Articles of Association which enunciates that the company carries out business of computer software developers, programmers, data entry operators, coding services providers, networking consultants, security consultants, computer education providers, buyers, sellers, importers, exporters, assemblers, traders, distributors, stockiest, agents, consultants and brokers & commission agents of all kinds of related products and its accessories either alone or jointly with one or more person, Govt, local authorities or body corporate.

(iv) There are two directors in the Company holding 20,000 (Twenty Thousand) Equity shares of Rs.10/- (Rupees Ten) each and two shareholders. The appellant company has started its operation and has been operational since the date of incorporation that is vide 03.04.2009 and the company has been doing business ever since, without any break. Due to some financial difficulties of the company appellant company failed to submit their balance sheet and annual return with the respondent but when approached learned that the status of the company was showing "Strike Off" and hence filed this appeal producing all the required documents including the Balance Sheets and annual return for the years for the financial Year ending 31/03/2014- 31/03/16. The balance sheets and annual return for the years showing the income and profits of the appellant company is given below:

<u>S. No.</u>	<u>Financial Year</u>	<u>Income</u>	<u>Net Profit Income</u>
1.	2012-2013	490785.00	2249.84
2.	2013- 2014	581492.00	4,717.64
3.	2014-2015	604620.00	8604.51
4.	2015-2016	631325.00	12979.38

Based on the account of the non-filing of Annual Accounts and Annual Returns for the Financial Years, 2014 to 2016, the Respondent had presumed that the Company has not undertaken any business further. The Audited Financial Statements for the Financial Years dated 2013-2016 has been marked and annexed as Annexure- **10 at Pages 59-145.**

4. The Applicant further states that the Appellant Company was still an on-going concern and was operational and the same appears from the balance sheets filed by the company. To understand that the company was a going concern although there is a Director's report mentioning the meetings were being held attached duly but not furnished any documents to show that the meetings were held on timely basis. The Director's Report for the Financial year ending 2016 has been duly attached marked and annexed as a continuation of Annexure **10** (page 117-122).

5. The appellant further submits that due to the inordinate delay in replying to the notice of the ROC (hereinafter referred as "Respondent" for brevity) had already removed the name of the appellant company's name

and when the removal brought to the notice of the representative of the appellant went to file the statutory documents as per the requirement of the Act and produced the documents requesting to change the status of the company from the site after fulfilling the statutory compliance made as per the Act. But the respondent did not accept the audited account as the company name has been struck off.

6. Thus, as per the pleadings and submissions of the appellant, the respondent's act of striking off the name of the Company from the register is unjust and unreasonable unjustified restriction and, therefore, liable to be set aside prayed by the appellant.

7. ROC, Odisha filed its reply. The appellant filed a supplementary affidavit answering the objections raised by the ROC, Odisha. The objections raised by the ROC Odisha in brief are the following:

8. ROC, Odisha in its affidavit in opposition stated that the appellant company's name was struck off and stand dissolved as on the date of striking off of the company's name and as per available records in the MCA Portal, the company has not filed its statutory documents, balance sheet since the financial year 2014.

9. ROC, Odisha also contends that the Appellants allegation regarding notice u/s 248 of the Companies Act not being received by the company and its directors in respect of striking of the name of the Company from the ROC office is false and baseless. Further it is duly submitted that respondent duly served the statutory notices under the foregoing section of the Companies Act, 2013 to the Company before striking off its name. ROC further contends that after issuance of notices

as required under Section 560 of the Companies Act, 1956 and the process of striking off the name of the Company from the register, the then competent authority had a reasonable cause to believe that the company was not functioning or in operation and marked the status of the company as "strike off" in the MCA21 Portal, on 21.06.2017.

Heard the Ld. Counsel for the appellant at length. Perused the records.

10. Ld. Counsel for the appellant submitted that the company is carrying on its normal business and was in the habit of filing statutory returns and due to the inadvertent mistake failed to file the documents in time and it is neither deliberate nor irrational on the part of the appellant company. He further submits that the impugned action of the striking off the company would adversely affect the functioning of the company and that the company is ready to comply by filing annual return within the stipulated time as granted by the Tribunal along with required fees. He prays for directing the respondent to restore the company's name in the register of the companies maintained by the ROC, Odisha.

11. It has been further submitted by the Ld. Counsel for the appellant company that there were financial difficulties faced by the Company which were resolved, the company came up and took steps to avail the same with the respondent but the respondent refused to accept it as on the day the company has been struck off from the register and also The appellant filed a supplementary affidavit answering the objections raised by the ROC, Odisha stating that the petitioner after receiving of the notice under section 248(1) from the ROC the company has filed statutory returns for the financial year ending 31/03/2013 vide

SRN Nos. G42870451 and G42869834 dated 05/05/2017 and after mobilizing the funds the company trying to comply for filing the statutory returns for the financial Year 2013-14,2014-15 and 2015-16 the status of company was stuck off and the MCA portal not accepted the documents for filing therefore, non-filing of the statutory returns were not deliberate.

12. What is the business in operation, nowhere stated in the appeal memorandum? There is a recital in the appeal memo that the object of the company contained in Clause III of the Memorandum and Article of Association of the company. Article 1 under clause III (A) of the Memorandum and Article of Association of the company, stipulates the works and objects of the company and the nature of business that the company has been engaged into. However, whether the company is doing business as a supplier or as a trader or distributor or into ancillary objects of building or construction work of any sort has not been mentioned clearly and no supporting proof is given as well.

13. Reading the Director's report in the year end 31<sup>st</sup> March 2016, it cannot be inferred that company is a still is a going concern given in the area of business as alleged. What business appellant has been carried on is silent in the report.

14. Looking into the statement of profit and loss produced by the Company of the years 2013 till 2016 it is understood that the revenue from operations slightly increased from the year 2013 to 2016 and also gained profit to the tune of Rs. 8,954.38 for the current year ending on 31.3.2016. However, there is no supporting proof to prove that any business as per the object of the company is doing by the appellant and the same cannot be



formulated from the careful scrutiny of the Director's Report, statement of profit and loss, financial statement and balance sheet and the company's nature of the business remains to be the same indicating that the appellant not doing any active business, but it is in operation.

At this point it is important to note that in **Purushottamdass And Another v. Registrar of Companies**, [ (1986) 60 Comp.Case 154 Bom], the Hon'ble High court of Bombay in an appeal filed under section 560 of the old Act, has held that: -

*"The objects 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 a period of 20 years, and to give them an opportunity of carrying on the business only after the company judge is satisfied that such restoration is necessary in the interests of justice. The company judge may be satisfied that either the company was carrying on its business or was in operation or otherwise, and it is, in the circumstances of the case, equitable and just to restore the company. It, however, does not mean that the rights and liabilities of the company are lost during the interim period, inasmuch as section 560(6) of the Companies Act provides that after an order of restoration is passed, it shall be deemed as if the company was never struck of the register of companies. The section also provides the company judge with wide powers to put certain conditions or directions at the time of ordering the restoration".*

15. This appeal came up for consideration under section 252 (3) of the Companies Act, 2013. Similar power to the Company Tribunal is provided under section 252(3) of the Companies Act, 2013. If this Tribunal is satisfied that the company is in operation without doing any active business even, then an order of restoration can be allowed if interest of justice demands but upon certain conditions and directions. It is good to read section 252(3). It read as follows: -

*“A company, or any member or creditor or workman thereof 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 workman before the expiry of twenty years from the publication in the Official Gazette of the notice under sub-section (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 register of companies, order the name of the company to be restored to the register of companies, and the Tribunal may, by the order, give such other directions and make such provisions as deemed just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off from the register of companies”.*

16. The above said discussion lead to a conclusion that the company is in operation even though it is not carrying on any active business as per its object. Therefore, the appeal is liable to be allowed in the interest of justice, equity and good conscience as held in the above cited decision.

17. In the result by exercising the powers conferred on this Tribunal under Section 252 of the Companies Act, 2013, this appeal is allowed upon 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 with resultant and consequential actions like changing status of Company from 'strike off to Active; to activate DIN Nos of the applicants etc.

- (2) The Applicant company is directed to file all pending statutory document(s) including Annual Accounts and Annual returns for the financial years 2013-14, 2014-2015 and 2015-2016 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. 50,000/- (Rupees Fifty thousand only) through online payment in [www.mca.gov.in](http://www.mca.gov.in) under miscellaneous fee by mentioning particulars as "payment of cost for revival of company pursuant to orders of Hon'ble NCLT in CP NO.606 /KB/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, Cuttack, Odisha 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 /offenses, if any, committed by the applicant company prior or during the striking off of the company.

Sd

**(Jinan K.R.)  
Member (Judicial)**

*Signed on 14th day of February 2018.*