

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

APPEAL CP No.490/KB/2017

In the matter of :

Section 252(3) of the *of Companies Act, 2013* ;

And

In the matter of

M/s. Rupayan Reality Pvt. Limited(Struck Off)

Vs.

*The Registrar of Companies, West Bengal
..... Respondent*

Date of pronouncement of the Order : 20-02-2018

CORAM : Mr. Jinan K.R., Member(Judicial)

For the Petitioner :

1. CS Arvind Mishra
2. Mehreen B Shaf, Advocate

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ORDER

Per Mr. Jinan K.R., Member (Judicial)

1. The Appellant petitioner has filed this appeal under Section 252(3) the Companies Act, 2013 against the order of the Registrar of Companies, West Bengal, whereby the name of the company, Rupayan Reality Private Limited, was struck off from the register of Companies from June 09, 2017.

2. There are four share holders of the Company each holding 25,000 (Twenty five thousand) equity shares of Rs. 10/- only.

3. The Appellant claims to be a Director as well as shareholder of the Appellant Company.

4. The accounts of the Company have been audited for the period ended 2013-14, 2014-15 and 2015-16.

5. The Appellant stated in the appeal that as per Section 248(1) (c)of the Companies Act, 20913, if 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, the Registrar shall send a notice to the Company and all the Directors of the Company, of its 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.

Sd

6. As per Section 248(5) of the Companies Act, 2013, 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 the name of the Company from the register of the Companies, and shall publish notice thereof in the official gazette, and on publication in the official gazette of this notice, the Company shall stand dissolved.

7. The appellant was unaware of the notification regarding striking off the name of the Company from the register of the respondent.

8. The appellant further stated that there were some internal disputes among the shareholders and management of the Company. However, after such disputes were resolved the Company took steps to file the same with the respondent in August, 2017 but the respondent refused to accept it on the ground that the name of the Company has been "struck off" from the register.

9. In August, 2017, when the representative of the above mentioned Company went to file/upload the balance sheets and the annual returns of the Appellant/Petition Company with the respondent, the said forms could not be filed/uploaded as it showed that the name of the Company was struck off.

10. The Appellant, thereafter, checked Ministry of Corporate Affairs Portal (MCA 21 Portal) for electronic filing of statutory documents.

11. The Appellant came to learn that the status of the Company was showing "strike off".

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12. It is also stated in the Petition that the Company is carrying on the business and is in operation and the same would appear from the Balance sheet of the Company and has not made any application within such period for obtaining the status of a dormant company under Section 455 of the Companies Act, 2013. Unless the name of the Company is restored, the Company is losing the legal status/entity of the company to run or deal the day to day operations/business activities.

13. It is stated that the delay in filing the Balance Sheets and Annual Returns were unintentional.

14. The appellant Company requested the Registrar of Companies, West Bengal to change the status of the Company from "Strike Off" to "Active" so that the statutory compliances can be made as per the requirement of the Act. But the Registrar of Companies, West Bengal expressed his helplessness to make any correction or modification in the master data and in accepting the Audited Accounts and Annual Returns as the name of the company has already been struck off from its record.

15. The appellant alleged in the appeal that the act of the Registrar of Companies, West Bengal in striking off the name of the Company from its register, is unjust and unreasonable and imposes unreasonable restrictions on the fundamental right of the Petitioner to carry on trade, business, occupation and or profession.

16. In view of the above, the appellant has filed the appeal seeking direction of this Tribunal to restore the name of the Company to the file and/or to the register of the Registrar of Companies, West Bengal and to rectify the maser data by modifying the status from "Strike Off" to "Active".

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17. The Registrar of Companies, West Bengal has submitted his report dated 19-12-2017 wherein it has been, inter alia, stated that :

- (i) The competent authority has struck off the name of the Petitioner Company under Section 248 of the Companies Act, 2013, since he had reasonable cause to believe that Rupayan Reality Private Limited was not carrying on business or in operation for a period of two immediate preceding financial years and has not made any application within such period for obtaining the status of dormant company under Section 455 of the Companies Act, 2013 ;
- (ii) The company has not filed its Balance Sheets and Annual Returns since financial year 2014 before the Office of the Registrar of Companies, West Bengal ;
- (iii) As per Section 252 of the Companies Act, 2013 a struck off company can be restored only on the direction of the NCLT within a period of three years from the date of the order of the Registrar. In terms of the said provisions, the NCLT while passing an order for restoration is to be satisfied that the company is carrying on business or in operation.
- (iv) As per available records in the MCA 21 portal, the Company has not filed its statutory documents i.e. Balance Sheet and Annual Return since 2014 ;
- (v) While uploading the Annual return and Balance Sheet in the MCA-21 online portal, the status of the company was showing as struck off and hence the Company could not file the same with the Office

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of the Registrar of Companies, West Bengal. Moreover, the reasons in which the Company has not filed its statutory returns for the previous years before the Registrar of Companies, West Bengal, is nowhere explained or disclosed ;

- (vi) As per available records maintained by the Office of the Registrar of Companies, West Bengal the Company, Rupayan Reality Private Limited was incorporated on 31-10-2011 and the aforesaid company was struck off on 09-06-2017 after complying with the provision of Section 248 of the Companies Act, 2013. The Registrar of Companies has issued notice under Section 248(1) (in e-form STK-5) of the Companies Act, 2013 read with Rule 7 of the Companies(Removal of names of companies from the Register of Companies) Rules, 2016 for removal of name of the company from the register of the companies, as there was reasonable cause to believe that the Company was not functioning or in operation for the period of last two immediate preceding financial years and has not made any application within such period for obtaining the status of dormant company under Section 455 of the Companies Act, 2013.
- (vii) The appellant company has failed to furnish the details of e-form STK-5 (public notice) issued by the Office of the Registrar of Companies, West Bengal dated 07-04-2017. The reason so specified in the Petition for non-filing of the statutory returns pertains to internal dispute amongst the Directors. It is only an afterthought by the Petitioner company.
- (viii) The Registrar of Companies, West Bengal has no knowledge as to whether the Company is continuing with its business or not.

Sd

- (ix) As per provision of Section 248(5) of the Companies Act, 2013, after the expiry of the prescribed time period and as no response has been received from the company and the public, a notice (in STK No.7) dated 30-06-2017 was issued by the Registrar of Companies, West Bengal reflecting the name of the company as dissolved/strike off with effect from 09-06-2017. The petitioner company's name appears at Sl. No. 2164201 of the Registrar of Companies notice (STK-7) dated 30-06-2017 and the same was published in the Official Gazette on 15-07-2017.
- (x) Once the name of the Company is struck off from the register by the Registrar of Companies, West Bengal, the statute does not permit its restoration by the same authority unless and until there has been an order of NCLT under Section 252 of the Companies Act, 2013.
- (xi) Section 164(2)(a) read with 167(1) of the Companies Act, 2013, the directors of the Company are disqualified and hence the directors of the subject company stand vacated from their directorship. In true sense, the Board of Directors is not in existence and therefore, the directors, has no locus standi as on date, to place the application before this Tribunal.
- (xii) Presently, the status of the company is 'struck off' and it is only the NCLT has the power to decide as to whether the company can be allowed to be revived under Section 252 of the Companies Act, 2013. In true sense, presently there is no existence of the company in the eyes of law.

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18. Heard the Ld. Counsel for the appellant and perused the records.

19. On perusal of the report of the Registrar of Companies, West Bengal, it appears that the name of the company was struck off on 09-06-2017 after complying with the provision of Section 248 of the Companies Act, 2013, on account of the Company not carrying on business or in operation for a period of two immediate preceding financial years and has not made any application within such period of obtaining the status of dormant company under Section 455 of the Companies Act, 2013. The Company has not filed its Balance sheets and Annual Returns since the financial year 2014 before the Office of the Registrar of Companies, West Bengal.

20. On perusal of the appeal memorandum, it appears that the provision of Section 252 has been enforced with effect from 09-06-2017 and as such, the petition is well within the limitation under both the sub-sections (1) and (3) of Section 252 of the Companies Act, 2013.

21. The Ld. Counsel for the Petitioner submitted that the company is carrying on its normal business and it was in the habit of filing its statutory returns and due to inadvertent mistake, failed to file the documents in time and it is neither deliberate nor intentional on the part of the Petitioner company.

22. The appellant further submits that the impugned action of the striking off the company would adversely affect on the company and he is ready to comply by filing annual return within the stipulated time as granted by the Tribunal along with the required fees.

Sd

23. The appellant prays for directing the respondent to restore the name of the company in the register of companies maintained by the respondent.

24. Nothing forthcoming to show that the Petitioner company has filed its balance sheets since the financial year 2014. Even if the appellant approached the respondent, it was after striking off the name of the company from the register of Companies.

25. There is no pleading at all that striking off the name of the company was in violation of any of the provisions of the Company's Act. Therefore, I find no illegality in striking off the name of the company by the Registrar of Companies, West Bengal.

26. The Ld. Counsel for the appellant submits that the petitioner company is a going concern and carrying on business or in operation since the incorporation of the Company till date.

27. According to him, upon the production of the balance sheets and annual returns for the period ended 31st March, 2016, which is duly certified by the statutory auditor, proves his said contention.

28. According to the Ld. Counsel, upon production of the balance sheets and annual returns sheet for the missing years, this Tribunal can be satisfied that the Company is carrying on business or in operation.

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29. To see that the company is carrying on its business or in operation, the appellant produced the balance sheets, annual returns and the Director's Reports for the period ended 31st March, 2016.

30. Reading the Director's Reports in the year ended 31st March, 2016, it is understood that the company is carrying on real estate business and generating revenue and running in profit.

31. As per the Balance sheet, the rates of profits are the following :

Sl.No.	For the year	Profit (in Rupees)
1	2012-2013	1,021,629=98
2	2013-2014	3,073,755=35
3	2014-2015	1,416,078=02
4	2015-2016	1,616,417=94

32. Looking into the profit and loss account and hat the Company is generating revenue for all the financial years of which company failed to submit returns give rise an indication that company is carrying on business.

33. Thus, from the careful scrutiny of the Director's Report, statement of profit and loss, financial statement and balance sheet, it appears to me that the company is an ongoing concern.

34. At this point, it is important to note that in Purushottamdass and Another V. Registrar of Companies [(1986) 60 Comp. Case 154 Bom], the

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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 off from 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".

35. This appeal came up for consideration under section 252(3) of the Companies Act, 2013. Similar power to the Company Tribunal under Section 560(b) of the Companies Act, 1956 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 reads 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”.

36. The above said discussion lead to a conclusion that the company is in operation, however, failed to submit statutory returns like Balance Sheets and Annual Returns since the financial year ended 31-03-2014.

37. The contention that there were some internal disputes among the shareholders and management of the Company and after such disputes were resolved, the representative of the Company went to file/upload the balance sheets and the annual returns of the Petitioner company with the Registrar of Companies, West Bengal for rectification of mistake committed on the side of the company, seems to be unbelievable in he absence of supporting evidence.

38. The objection raised by the ROC, West Bengal that the director of the Company is disqualified because of striking off the name of the Company, seems to have no basis because this appeal was filed by the Company through its director/shareholder. The director being the shareholder, he can maintain an appeal of this nature.

39. Being found that this appeal was filed in time and company was at the time of its name being struck off, carrying on business, the petition is liable to be allowed in the interest of justice, equity and good conscience as held in the above cited decision.

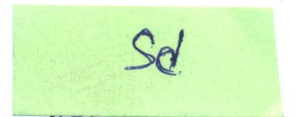
40. In the result, by exercising the powers conferred on this Tribunal under Section 252 of the Companies Act, 2013, this ^{the} appeal is allowed upon the following directions :

- (1) The Registrar of Companies, the respondent herein, is ordered to restore the original status of the Petitioner 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 Petitioner company is directed to file all pending statutory document(s) including Annual Accounts and Annual returns for the financial years 2013-2014, 2014-2015, 2015-2016 and 2016-2017 along with prescribed fees/additional fee/fine as decided by the Registrar of Companies within 30 days from the date on which its name is restored on the Register of Companies by the Registrar of Companies, West Bengal ;
- (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 under miscellaneous fee by mentioning particulars as "payment of cost for revival of company pursuant to orders of NCLT in CP No. 490/KB/2017" ;

- (5) The petitioner is permitted to deliver a certified copy of this order with the Registrar of Companies within thirty days of the receipt of this Order ;
- (6) On such delivery and after duly complying with above directions, the Registrar of Companies, West Bengal is directed to, on his Office name and seal, publish the order in the Official Gazette ;
- (7) The impugned action of striking off of the name of the Company will not come in the way of the Registrar of Companies, West Bengal to take appropriate actions 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.

41. Urgent photo stat certified copy of this Order, if applied for, be supplied to the parties upon compliance of all the requisite formalities.



(Jinán K. R.)
MEMBER(Judicial)

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