

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

**APPEAL CP No.676/KB/2017**

In the matter of:

Section 252 and other applicable provisions of the  
*Companies Act, 2013;*

And

In the matter of

*M/s. Sri Balaji Writing Aids Private Limited  
(Company Name Struck Off by the Registrar of  
Companies) ;*

And

*Sunil Kumar Daruka, working for gain at 115/1,  
Chaterjee Para Main Road, Sarsuna, Kolkata - 700  
061, within the jurisdiction of this Tribunal*

*.... Petitioner*

*Vs.*

*The Registrar of Companies, West Bengal*

*..... Respondent*

**Date of pronouncement of the Order: 21-02-2018**

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**CORAM: Mr. V.P. Singh, Member(Judicial)  
Mr. Jinan K.R., Member(Judicial)**

For the Petitioner:

1. CA Shashi Agarwal

**ORDER**

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

1. The Appellant, being the shareholder, holding 8250 equity shares, and the Director of the Appellant Company, namely, Sri Balaji Writing Aids Private Limited has filed this appeal under Section 252 of the Companies Act, 2013 against the striking off of the name of the Appellant Company from the Register of Companies on 30-06-2017 by the Registrar of Companies, West Bengal, as per notice under Section 248(5) of the Companies Act, 2013, allegedly without considering the activities and turnover based on the audited accounts filed by the Appellant Company for the year ended 31-03-2013.

2. It has been stated in the Appeal that Sri Balaji Writing Aids Private Limited was incorporated on 07-09-2007 under the Companies Act, 1956 as a Private Limited Company, to carry on its business of investment and trading.

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3. The authorised capital of Rs. 25,00,000/- is divided into 2,50,000 equity shares of Rs.10/- and issued, subscribed, paid up capital of the company is Rs. 24,03,750/- divided into 2,40,375 equity shares of Rs.10/- each.

4. It has further been stated that the company had issued shares during the period 01-04-2013 to 31-03-2014 due to which the paid up capital of the company has increased from Rs. 9,03,750/- to Rs. 24,03,750/-. However, inadvertently, the e-form relating to allotment of equity shares was not filed. The said e-form will be filed once the status of the company becomes active.

5. Further, it is submitted that the Appellant Company is regular in filing Income-tax return with the Income-Tax Department.

6. A copy of the Audited Accounts along with copies of Income-Tax return are annexed with the Appeal and marked collectively with letter "B".

7. It has also been stated in the Appeal that all the legal formalities and compliance have been made/complied by the Appellant Company from time to time and there has been no fault and/or violation of the provisions of the Companies Act, 1956/ the Companies Act, 2013, except non-filing of Annual Return and the Balance sheet for the year ended 31-03-2014 and for subsequent year.

8. The Appellant was doing business and regularly carrying business activities since incorporation. The financial position of the Company as on 31-03-2016, as stated in the Appeal, is as below:

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<b>Source of Fund</b>	<b>Amount (Rs.)</b>
Share capital	24,03,750=00
Reserves & Surplus	43,97,013=00
Long Term Borrowing	13,53,000=00
Deferred tax Liabilities(net)	3,69,002=00
Trade Payable	2,03,98,481=00
Other Current Liabilities	25,34,073=00
<b>Total</b>	<b>3,14,55,319=00</b>

#### **Application of Fund**

<b>Fixed Assets</b>	<b>65,92,793=00</b>
<b>Inventories</b>	<b>1,10,62,594=00</b>
<b>Trade Receivables</b>	<b>1,30,700=00</b>
<b>Cash and cash Equivalents</b>	<b>3,69,465=00</b>
<b>Short term Loans &amp; Advances</b>	<b>44,56,001=00</b>
<b>Other Current Asset6s</b>	<b>2,78,194=00</b>
<b>Total</b>	<b>3,14,55,319=00</b>

9. The Appellant stated in the appeal that there is default of filing of the Annual Return and the Balance Sheet for the earlier years (since 31-03-2014) and up to the year ended 31-03-2017. However, when it came to the knowledge of the Directors of the Appellant Company that the Balance Sheet and the Annual Return of the Appellant Company was not up to date filed with the Office of the Registrar of Companies, immediate steps were taken by the Director of the Company. But at the time of filing it came to the knowledge of the Directors of the Company that the name

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of the Appellant Company has been struck off through the portal of Ministry of Corporate Affairs. The Directors of the company immediately informed the shareholders about the company name being struck-off. The Appellant immediately also inquired with the respondent relating to the name having been struck off and then also it was confirmed. A copy of the website print out is annexed with the Appeal and marked letter "C".

10. It has also been alleged that the Registrar of Companies, West Bengal has struck off the name of the Appellant Company from the Register under Section 248 of the Companies Act, 2013 in concluding that the company is not carrying business activities based on non-filing of annual return and audited accounts and it is illegal.

11. Further, it is submitted that the Appellant Company is carrying business activities whereas as per the last profit and loss account filed with the Office of the ROC, West Bengal for the year 31-03-2013, the turnover of the company was Rs. 1, 77,93,981/-. Hence, it implies that the Registrar of Companies has struck off the name of the Appellant Company on 30-06-2017 without considering the activities and turnover based on the audited accounts filed for the year ended 31-03-2013.

12. It has been stated that the aforesaid delay on the part of the Appellant Company had occurred because the Company Accountant who was responsible for the statutory compliance along with the aforesaid work had failed to carry out his duties and at the same time directors/shareholders of the Appellant Company are person who not know all the provisions of the Companies Act.

13. The Appellant has further stated that document including the Balance sheet and Annual Return of the earlier years not filed, will be filed

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as and when the Registrar of Company, West Bengal allow the company to file the same. It is alleged in the Appeal that there is no question of the respondent having any reasonable cause to believe that the Appellant Company was not carrying on business or in operation.

14. The Appellant company has also not contemporaneously received any letter inquiring whether it was carrying on business or in operation. Further, non-filing of annual return and the balance sheet cannot be the ground for concluding that the company was not carrying business activities.

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".

17. The Registrar of Companies, West Bengal has submitted his report dated 19-01-2018 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 M/s. Sri Balaji Writing Aids Private Limited was not carrying on business or in operation for

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the last two(2) immediate 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) It is evident from the records that the company has not filed its Balance Sheets and Annual Returns since the year 31-03-2014 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(3) years from the date of the order of the Registrar. In this regard, it is submitted that 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) It is further submitted that the petitioner has pointed out towards the particulars of the Company and its main objects on which it is carrying on its business. The petitioner Company through Sunil Kumar Daruka, one of the shareholders of M/s. Sri Balaji Writing Aids Private Limited, has filed this petition to restore the name of the company to the register of the Registrar of Companies, West Bengal and to modify the status of the company from strike off to active. The Company, whose name is struck off and stand dissolved as on date. As per available records in the MCA 21 Portal, the Company has not filed its statutory documents, i.e. Balance

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sheet and Annual Returns since 31-03-2012. Hence, the petitioner may be put to strict proof with the contention made therein.

- (vi) As per records maintained by the Office of the Registrar of Companies, West Bengal, the Company, Sri Balaji Writing Aids Private Limited was incorporated on 07-09-2007 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 Registrar 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(2) 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) It is submitted that due to non-filing of statutory returns by the company, the competent authority drew an opinion that the Company was not carrying on business or in operation. Hence, the petitioner may be put to strict proof with the contention made therein. Further, it is submitted that 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 name of the strike off company is appearing at Sl. No. 6748 of the Registrar of Company's notice

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(STK-7) dated 30-06-2017 and he same was published in the Official Gazette on 15-07-2017.

(viii) Presently, the status of the company is 'struck off' and is only the NCLT who has the power to decide as to whether the company can be allowed to be revived under Section 252 of the Companies Act, 2013. Accordingly, in true sense, presently there is no existence of the company in the eyes of law.

18. Heard the Ld. Pr. CA 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. In the absence of any reply to the statutory notice the ROC is competent to draw adverse presumption that the company either stopped its business or not in operation since it failed in submitting statutory returns more than two years. Therefore, there is no irregularity or illegality in the striking off the name of the company by him.

20. At this juncture Ld.Pr.CA on the strength of a Judgment of Hon'ble High court of Culcutta in Rishima SA Investments LLC Vs. Registrar of Companies, West Bengal & Ors. (W.P.No.20044 (W) of 2016 submits that the order of striking off the name of the company is perverse and without assigning any reason and therefore this appeal is liable to be allowed with

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out cost. A reading of the above cited decision what we understood is that in a petition filed by a related party who moved arbitration proceedings against the company which was struck off by the ROC, West Bengal on the basis of an application moved by two of its directors without supporting reasons but when the said company was doing business.

21. The fact in issue in the said case is not at all similar to the case in hand. In this case the default in non filing of statutory returns and balance sheets for more than three years is an admitted fact. The appellant has not raised any contention that it did not receive the statutory notice. For want of receipt of statutory returns and balance sheets for a period of two immediately preceding financial years and the Company having not applied for obtaining a dormant status under section 455 of the Companies Act, 2013, the ROC is competent to issue notice under section 248 of the Act and after completing all the procedure under section 248 of the Act he has to struck off the name of the company. In this case all the procedure he had to be followed seen complied by ROC. 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. Therefore, the above said contention is found devoid of any merit.

22. On a 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.

23. The Ld. Pr. CA for the Appellant submitted that the company is carrying on its normal business and it was in the habit of filing its statutory returns and the delay had occurred because the Company Accountant who

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was responsible for statutory compliance along with the aforesaid work, had failed to carry out his duties and at the same time, Directors/shareholders of the company are person who do not know all the provisions of the Companies Act, and it is neither deliberate nor intentional on the part of the Appellant company.

24. Ld. Pr.CA has 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. He prays for directing the respondent to restore the name of the company in the register of companies maintained by the respondent.

25. The Ld. Pr. CA 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. According to him, upon the production of the balance sheets and annual returns for the period ended 31<sup>st</sup> March, 2016, which is duly certified by the statutory auditor, proves his said contention. He further would submits that the balance sheets and annual returns for the missing years, proves that the Company is carrying on business or in operation.

26. 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 31<sup>st</sup> March, 2016. Reading the Director's Reports in the year ended 31<sup>st</sup> March, 2016, it is understood that the company is carrying on real estate business and generating revenue and running in profit.

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

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Sl.No.	For the year	Profit (in Rupees)
1	2012-2013	431,351=00
2	2013-2014	553,254=00
3	2014-2015	386,643=00
4	2015-2016	279,369=00

28. Looking into the profit and loss account and that 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.

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

30. 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*

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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”.

31. This appeal came up for consideration under section 252(3) of the Companies Act, 2013. Similar power 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”.*

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32. The abovesaid 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.

33. The contention that there were some internal problems with the company accountant, who was responsible for statutory compliance and who had failed to carry out his duties, and at the same time, directors/shareholders of the company having no knowledge of all the provisions of the Companies Act, for which the statutory documents could not be filed since 31-03-2014 before the Registrar of Companies, West Bengal, seems to be unbelievable in the absence of supporting evidence.

34. Failure to file statutory returns for more than three years only give rise a legitimate inference that it was sleeping over its statutory obligations without due care and caution. The default thus can be excused only on payment of cost. Awarding a cost of Rs. 50,000/- for compensating the lapses for non-filing of statutory returns and balance sheets for about five years is found fair and just in the peculiar nature and circumstances of the appeal in hand.

35. 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 but with cost as referred above but subject to payment of cost.

36. 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:

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- (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](http://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. 676/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;

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(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.

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

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(V.P Singh)  
Member(Judicial)

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(Jinān K. R.)  
Member Judicial)