

**In the National Company Law Tribunal,
Kolkata Bench, Kolkata**

CP/486/KB/2017

In the matter of:

An application under Section 252(3) of the Companies Act, 2013

In the matter of:

M/s Balaji Edutech Solutions Pvt. Ltd, a Company incorporated under the provisions of the Companies Act, 1956, and having its Registered Office at 7, Ganesh Chandra Avenue, 3rd Floor, Kolkata 700 013

.....Appellant/Petitioner

And

Registrar of Companies, having its Office at Nizam Palace, 2nd MSO Building, 234/4, A.J.C. Bose Road, 2nd Floor, Kolkata 700 020

..... Respondent

Order Delivered on 19th January 2018

Coram:

V. P. Singh, Member (J)

Jinan K.R., Member (J)

For the Financial Creditor : 1. Ms. Swapna Choubey, Advocate.
2. Mr. Sidhartha Sharma, Advocate.
3. Ms. Namrata Basu, Advocate.

ORDER

Per Jinan K.R., Member (J)

1. This is an appeal filed by the Company by name Balaji Edutech Solutions Pvt. Ltd. under Section 252 of the Companies Act, 2013, by inter-alia seeking to direct the Respondent to restore the Company which was struck off, by the Registrar of Companies; and to permit it to carry on the normal business etc.

Sd

Sd

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

- (a) M/s Balaji Edutech Solutions Pvt. Ltd, (is referred to as "Company") is a private Limited Company and was incorporated on 08.09.2010 in the State of West Bengal.
- (b) The Authorized share capital of the Appellant Company is Rs.2,00,000/- divided into 20,000 Equity Shares of Rs.10/- each. The issued, subscribed and paid up Equity Share Capital of the Company as on the date of appeal is Rs. 1,00,000/- divided into 10,000, Equity shares of Rs.10/- each fully paid up, all and there are no different classes of shares.
- (c) The main objects of the Company, in brief, as revealed from the Memorandum and Articles of Association are to carry on the business of establish, run, maintain, operate, manage, school, colleges, educational institutions, training and professional institutions for technical and cultural education, academic coaching center, vocational training center, management training, call center training, computer training center, learning centers, languages including foreign languages development center, personality development center, learning center for songs-music-dance-drama, cultural training centers and other similar activities of own or under any franchise agreement, provide assistance, technical know-how, expertise to others under franchisee agreement, counseling for higher studies in India and Abroad, placement services and supply of manpower of employers and to act as advisors, consultants or in any other capacity in the fields of

all branches of financial, technical, marketing and general management.

- (d) There are two shareholders of the Company having 5000 Equity Share of Rs.10/- each only and they are the two Directors of the Company. The appellant Company had commenced operations after incorporation and has been doing business ever since, without any break. But due to some internal disputes in the management of the company appellant failed to submit their balance sheet and annual return with the respondent and when approached along with required statement learned that the status of the company was showing "Strike Off" and hence filed this appeal producing all the required documents inclusive of balance sheets and annual return for the years from 31.03.2014 to 31.03.2016. The financial statements show the following details regarding income and profits.

S. No.	Financial Year	Income.	Net Profit in Rs.
1.	2013-2014	-	11079/-
2.	2014-2015	-	13909/-
3.	2015-2016	-	10729/-

The Audited Financial Statements for the Financial Years 2013-2014 to 2015-2016 are produced and marked as Annexures A1.

- (e) The Applicant further states that it has carrying on the business and is in operation and the same would appear from the balance sheet of the company. Whether it has been regular in conducting meetings under the Companies Act, 2013 there is no pleading in the appeal but produced Directors Report for the year ended 31st

March 2014, and for the financial year ended 31st March 2016. (Annexure A1 page 17 and 32). Directors report for the Financial year ending 31st March 2015, not produced.

4. The appellant further contends that due to inordinate delay in replying to the notice of the respondent, ROC under sub-section (1) of Sec.248 of Companies Act, 2013, had already removed the name of the appellant and when the removal brought to the notice of the appellant representative of the appellant went to file the statutory documents as per the requirement of the Act and produced the documents requesting to change status of the company from the site so that the statutory compliance can be made as per the requirement of the Act. But the respondent did not accept audited account as the company name has been struck off.

5. According to the appellant, the act of the respondent in striking off the name of the company from its register is unjust and unreasonable and imposed unjustified restriction and, therefore, liable to be set aside.

6. Heard Ld. Counsel for the appellant. Perused the record. ROC, West Bengal filed its reply. The appellant filed a supplementary affidavit answering certain objection raised by the ROC, West Bengal.

7. ROC, West Bengal 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 from 31/3/2014 and annual return from 31/3/2013.

8. ROC, WB in its objection also raised an objection that pursuant to Sec.164(2)(a) read with Sec.167(1) of the Companies Act, 2013 the Directors of the company is disqualified and also Directors of the subject company stand

vacated from their Directorship and since the Board of Directors is not in existence and, therefore, the Directors have no locus standi to place the application for and on behalf of the company.

9. As per provision of Sec.248(5) of the Companies Act, 2013 after expiry of the prescribed time period and no response has been received from the company and the public, a notice (in STK No.7) dated 30/6/2017 was issued by the ROC, WB reflecting the name of the company as dissolved/strike off with effect from 9/6/2017. The ROC, WB has stated that the petitioner company name appears at Serial No.855 of the Registrar of Companies notice STK No.7 dated 30/6/2017 and the same was published in the Official Gazette on 15/7/2017

10. Ld. Counsel 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 due to inadvertent mistake failed to file the documents in time and it is neither deliberate nor intentional on the part of the appellant company. He 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 required fees. He prays for directing the respondent to restore the name of the company in the register of companies maintained by the ROC, WB.

11. According to the Ld. Counsel for the appellant there were some internal disputes in the management of the company and after such disputes were resolved, the company took steps to avail the same with the respondent in July 2017, but the respondent refused to accept it as on that day the company has been struck off from the register.

12. The above contention shows that the ROC, West Bengal in exercise of the power conferred upon the ROC under Sec.248 of the companies Act,2013 it

struck off the name of the company from its register after confirming all formalities as provided under the Act.

13. ROC, West Bengal is satisfied that the company was not carrying on business or any operation for the last three years and he can strike off the name of the company under Sec.248 of the Companies Act.

14. Nothing forthcoming to show that the appellant company has filed its balance sheet from 31/3/2013. There is no such pleadings at all in this regard. Therefore, we find no illegality in striking off the name of the company by the ROC, West Bengal.

15. Ld. Counsel for the appellant submits that the appellant company is a small company doing its business in consultancy and therefore not generate much income but running in profit and it is carrying on its business. According to him upon production of the annual return and balance sheet for the missing years, this Tribunal can be satisfied that the company is carrying on business or in operation.

16. To see that the company is carrying on its business or in operation, the appellant produced the above referred balance sheet, annual return and Directors' Report. A reading of the Directors' Report not at all satisfactory to hold that the company is actively doing its business.

17. 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 3 of the Memorandum and Article of Association of the company. The Memorandum and Article of Association of the company, Article 1 in Clause 3 shows its object as referred above. Whether it was doing any consultancy or established educational institution, training as professional institution etc. here in this case no supporting proof produced.

18. In the Directors Report mentioned above year ended 31st March 2016, it is reported that in future the company is planning to explore new opportunity in the market and expand its business prospect. At this juncture it is good to refer the balance sheet and financial statement as referred above.

19. The statement of profit and loss for the year 2014, 2015 and 2016 is shown above. The statement of profit and loss produced for the three years does not enable us to come to a conclusion that any kind of business is going on or that it has got fixed assets other than cash in hand. The expenses shown in the profit and loss statement for all the three years is equal to the profit after tax. Under the head income, no income shown for the year ended 31st March 2014 and 31st March 2015. The financial statement for the year ended 31st March 2016 shows the very same data under the head income and total revenue, there is no income. On the other hand expenses shown as Rs.10,729/- for the year ended 31st March 2016; Rs.13,909/- for the year ended 31st March 2015; Rs.11,079/- for the year ended 31st March 2014 and Rs.10,601/- for the year ended 31st March 2013. Therefore, on a careful scrutiny of the Directors Report, statement of profit and loss, financial statement and balance sheet, we are not at all convinced that the appellant company is doing any business but those documents coupled with the directors report shows that company is in operation even if not engaged in any business as shown in the MOU and not a closed Company.

20. In **Purushottamdass And Another vs 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 off 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”.

21. 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:

“S. 252. Appeal to Tribunal

(3) If a company, or any member or creditor or workmen 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, 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.”

22. The objection of ROC that filing of appeal by director of the company is not maintainable is found not sustainable under law. The financial statement for the year ended 31st March 2016 shows that the shareholders of the company as on 31st March 2016 are Bijay Kumar Agarwal and Vineet Agarwal. Bijay Kumar Agarwal is holding 5000 shares i.e. 50% of its holding and Vineet Agarwal also holding 50% i.e. 5000 shares. This appeal was filed by the appellant Balaji Edutech Solutions Pvt. Ltd. through Punit Agarwal, son of Bijay Kumar Agarwal claiming that he is a director of the company since 30th June 2013. A supplementary affidavit has been produced to show that the petitioner Punit Agarwal is the Director, member and shareholder of the company and that he is permitted to file appeal for restoration alleging that he is holding 5000 equity shares amounting to 50% of the total shareholding and also subscriber to the memorandum of the company.

23. According to the Ld. Counsel for the appellant, the audited annual account for the year ending 31st March 2016 reflects status of the appellant member shareholder. He also produced letter of authority issued by Vineet Kumar Agarwal another shareholder holding 5000 equity shares of the company. A reference to the letter of authority and the Memorandum and Arrticle of Association shows that the appellant herein is an authorized person to file an appeal in the name of the company. Thus, filing of this appeal by the director who is also a shareholder is perfectly maintainable.


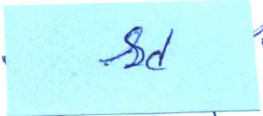
24. Facts and circumstances above referred enable us to hold that the appellant company even if not a doing any active business it is found in operation. This appeal has been filed in time.

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


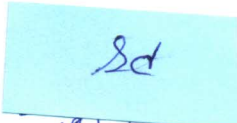
26. In the result by exercising the powers conferred on this Tribunal under Section 252 of the Companies Act, 2013, this appeal is allowed upon the following directions:

- i. 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.
- (ii) 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 45 days from the date on which its name is restored on the Register of companies by the ROC;
- (iii) The Company's representative, who has filed the Company application is directed to personally ensure compliance of this order.

- (iv) 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 this Tribunal in CP NO.486 /KB/2017".
- (v) The applicant is permitted to deliver a certified copy of this order with ROC within thirty days of the receipt of this order.
- (vi) 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;
- (vii) 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.

(V.P. Singh)
Member (Judicial)

(Jinan K.R.)
Member (Judicial)

Signed on 19th January 2018.