

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, KOLKATA

Appeal No. 488/KB/2017

CORAM

Shri V.P. Singh
Hon'ble Member (J)

Shri Jinan K.R.
Hon'ble Member (J)

In the matter of Section 252 of the Companies Act, 2013

In the matter of :

Sansar Green Technologies Private Limited, having its registered office at
Buxidih Road, Giridih-815301, Jharkhand

..... Petitioner

-Vs-

The Registrar of Companies, Bihar & Jharkhand, having its office at Maurya
Lok, Complex, Block-A, Western Wing, 4th Floor, Dak Banglow Road, Patna-
800001.

..... Respondent

For the Petitioner :

1. Mr. Rohit Kumar Keshri, Pr.C.S.
2. Mr. Rahul Parasrampurua, Pr.C.S.

Judgement delivered on :

19 / 11 / 2018

ORDER

Per Shri V.P. Singh, Member (Judicial)

The instant petition has been filed by the company above mentioned (Sansar Green Technologies Private Limited) under sub-section (3) of section 252 of the Companies Act, 2013 (the Act), seeking restoration of the name of the company in the register of companies as if the name of the company had not been struck off. Directions have also been sought for upon the respondent (RoC) not to initiate with penal action against the company for default in filing of its Annual Return under section 92 of the Companies Act, 2013 (Section 162 of the Companies Act, 1956) and for default in filing under section 137 of the Companies Act, 2013 (Section 220 of the Companies Act, 1956) or under

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any other provisions of the Act. The petitioner is aggrieved by the order dated 14.07.2017 published in the Gazette of India striking the name of the petitioner company off the register of companies, as per sub section (5) of section 248 of the Companies Act, 2013.

2. The stand taken by the petitioner in the instant petition is that:
 - i. the Registrar of Companies, Bihar & Jharkhand ("RoC") has struck off the name of the company from the register ignoring the fact that the said company is carrying on business activities.
 - ii) the RoC is striking off the name of the said company without application of mind;
 - iii) the RoC erred in striking off the name of the company without carrying out proper investigation;
 - iv) the RoC erred in wrongly assuming that the company is not carrying on business activities.
 - v) the RoC erred in concluding that the said company is not carrying on business activities based on non-filing of annual return and audited accounts.
 - vi) the RoC at behest of other person wrongfully striking off the name of the company from the register in spite of the fact that the said company is active and at the same time carrying on business activities.
3. In support of the contentions mentioned (supra), the petitioner company has averred in the petition that:

- a. The company was incorporated with the Registrar of Companies, Bihar, Patna (the "respondent") as a company limited by shares on 5th June, 2012.
- b. The company has been active since its incorporation. The company has maintained bank accounts and in support, the copies of Bank Statements from December, 6th, 2012 to August 30th 2017 are annexed to the petition (Annexure "A2").

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- c. The company in order to prove its existence during the period June 5th, 2012 and onwards, the copies of the audited Balance Sheets for the financial year 2013-14 and 2014-15 are annexed to the petition (Annexure "A3 and A4", respectively).
 - d. The company has filed its annual account for the financial year 2015-16, a copy of which is annexed to the petition (Annexure "A5").
 - e. The company for the financial year 2013-14 to 2015-16 also held and convened, from time to time, the Annual General Meetings of the shareholders of the company and minutes of the same are annexed to the petition (Annexure "A6").
 - f. The accounts of the company were prepared and audited every year but due to lack of knowledge, professional guidance and without malafide intention failed to file the required statutory returns. However, it was regular in filing its Income Tax returns for the Assessment Year 2013-14 to 2016-17 and copies of Income Tax Returns are annexed to the petition (Annexure A7).
 - g. The company is having registration with Central Sales Tax, Value Added Tax, Goods and Services Tax, and Udyog Aadhar Memorandum, copies whereof are annexed to the petition (Annexure A8).
 - h. Recently, it came to the notice of the company from the portal of Ministry of Corporate Affairs that its name has been struck off under the Companies Act, 2013. The company has been trying to maintain all its requisite documents as per the provisions of the Companies Act, as applicable to it, but owing to the inadvertent and unavoidable conditions, the statutory documents as required under the law could not be filed with the respondent in time. The status of the company on web portal of MCA shows "strike off".
4. In response to notice sent upon the Respondent (ROC-cum-OL, Jharkhand) by the petitioner, the ROC has filed his report dated 30.11.2017 with the following statements / submissions based on his records :

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- i) The petitioner company was incorporated on 05th June, 2012 under the Companies Act, 1956 as a Private Limited Company to carry on the business of Landscaping & Plantation in farm house, co-operative housing societies as per Memorandum of Association of the said company.
- ii) The Show Case Notice was issued to the company and its Directors on 20.03.2017.
- iii) The company had not filed the balance sheet and the annual return and even failed to hold annual general meeting etc. as required U/s 92, 96 and 129 of the Companies Act, 2013. However, the facts narrated in para 'f' of the application about filing of Income Tax Return are not disputed if it is filed as per requirement of I.T. Act with IT Department, but the company has not prepared the annual account and laid before the Annual General Meeting as required under section 129 of the Companies Act, 2013.
- iv) The petitioner company has only filed the balance sheet (as claimed) as at 31.03.2016 even after issue of show cause notices and the name of the company has been struck off on 14.07.2017.
- v) The petitioner company has not filed its balance sheet for the financial year 31.03.2013, 31.03.2014 and continuously for a period of three years and thus RoC has considered to remove the name from the register as per section 248 of Companies Act, 2013.
- vi) Public Notice (Form STK-5) has been placed on MCA portal including the list of companies, showing the petitioner company at Sl.No.53, as envisaged under section 248(1) of the Companies Act, 2013 on 18.04.2017, but no reply has been received from company and that finally, the Notice of striking off and dissolution (Form STK-7), dated 14.07.2017 has been published on the website of MCA portal, showing the name of the petitioner company at SL.48 has been struck off the register of companies on 21.06.2017 and the company is dissolved on that date.
- vii) The facts narrated in para 'f' of the petition are denied as the company has already made the defunct knowingly, as there is no explanation as to why one year balance sheet is filed only. It is clear that company has

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already violated the provisions of section 92, 96, 129 and 137 of the Companies Act, 2013 and is liable for prosecution as provided under penal provisions of the respective sections of the Act.

viii) RoC office has no objection to restore the name of company but the company may be directed to compound the offence first by filing an appropriate Form (GNL-1 along with requisite fee) as the company has neither approached the Registrar of Companies to grant an extension of time to hold Annual General Meeting or even not applied before Hon'ble NCLT, as required U/s 97 of the Companies Act, 2013, as petitioner company is not only hidden the facts but not reporting the legal requirement of the Act.

5. In his above mentioned report dated 30.11.2017, RoC has prayed for direction upon the company to compound the offence first and to file relevant GNL-1 along with prescribed fee and to impose heavy cost on the petitioner company as well as directors for non-submission of proper facts.

6. As per directions of this Tribunal vide its order dated 14.11.2017, the notice has been served upon the Regional Director, Eastern Region, as also the ROC, Bihar & Jharkhand (as the registered office of company is located at Giridih, Jharkhand). The ROC has submitted his report / written submissions vide his letter dated 15.12.2017. The stand now taken by the ROC is as under:

- i) RoC has denied the fact that he has proceeded to strike off the name of company without application of mind. As per record, the show cause notice was issued to company as well as its Directors on 20.03.2017.
- ii) As explained by the petitioner company vide its letter dated nil, received at his office on 15.12.2017, a copy enclosed with annexure, the company is engaged in the business of "works contract" in landscaping services in Government sector and the company has been enrolled as registered contractor in various Government Departments of Jharkhand State. Further, as mentioned in para 7 of the letter, the company is having CC account of United Bank of India and they have a working capital loan of Rs.27 lac from the Bank, but on MCA portal, the charge

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was not showing on the Website. Hence, the name of the company has been struck off on the ground that against the company no charge is seen and the company being the defaulter in filing the financial statements and annual return for the year 2013, 2014 and 2015 also.

- iii) This office has no objection to restore the name of the company, if the company is ready to file above noted all due return under the provisions laid down u/s 403(1) Proviso-1 of the Companies (Registration of offices and fees) Rules, 2014 which comes to Rs.45,500/- and other penalty as may be deemed fit and imposed by Hon'ble NCLT.

7. In his second report dated 15.12.2017, ROC has prayed to restore the name of petitioner company, if the company is ready to file the above mentioned due returns and if they agreed to pay the penalty as imposed by this Tribunal and to award 50% cost of proceedings to his office.

8. As envisaged under sub section (1) and (2) of section 248 of the Companies Act, 2013, the ROC has issued notice dated 20.03.2017 to the company as well as its Directors namely, Rimi Kaushik and Rajeev Singh followed by a public notice dated 18.04.2017 (in Form No. STK-5) showing the petitioner company at Sl. 53 and proposing to remove / strike off the name of the company from the register of companies and dissolve it unless a cause is shown to the contrary, within thirty days from the date of the notice. Possibly, the company did not care to respond to such notices. Thereafter, ROC has issued public notice dated 14.07.2017 (Form No. STK-7) as envisaged under sub section (5) of section 248 of the Companies Act, 2013 and Rule 9 of the Companies (Removal of names of companies from the register of companies) Rules, 2016 showing the name of the company (Sl. No. 48) struck off the register of companies on 21.06.2017 and the company is dissolved.

9. From the second report of RoC dated 15.12.2017, it appears that the company has submitted its representation at the belated stage, praying for making the status of the company to "active" from "strike off" and the ROC after having considered the said representation from Shri Rajeev Singh (DIN : 03619365), who claims to be the Managing Director of the company, has sent

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his second report dated 15.12.2017. In the said representation, the company (which remained struck off and dissolved) has emphasised its corporate existence with the following contentions :

- i) Rajeev Singh (DIN: 03619365), the Director of the above named company, has been a director of the company since 05th June, 2012, (i.e. since incorporation)
- ii) The applicant company filed Company Appeal No. 488 of 2017 before National Company Law Tribunal, Kolkata Bench to make the Status of the Company "**Active**" from the status "**Strike off**".
- iii) The affairs of the Company have not been wound-up. The Board of Directors of the Company adopts and sign the audited Annual Accounts since incorporation (05.06.2012) till the financial year 31st March, 2017. Such audited Annual Accounts duly adopted and approved by the shareholders at every Annual General Meeting, but due to some renovation in the office, and no proper consultation by the Professional, the company has failed to file annual accounts and annual returns with the Ministry of Corporate Affairs, but the same was duly filed with the Income Tax Department and with other Regulatory Authority.
- iv) After receiving the notice from the ROC, the company has changed the Consultant and started filing the annual forms, but just after filing annual account Form AOC-4, for the financial year 2015-16, the name of the company was struck off from the register of companies.
- v) The Company has always held Annual General Meeting on or before due date as per the Companies Act, 1956 and the Companies Act, 2013 since incorporation till the financial year 31.03.2017.
- vi) The company is engaged in the business of "works contract" in landscaping services in government sector and it has been enrolled as registered contractor in various government departments of Jharkhand.
- vii) The company is engaged in the business of "works contract" in landscaping services in with CC account of United Bank of India, the company has a working capital loan of Rs. 27 lac from the bank. The bank statements are submitted. The company is not able to submit cheques issued by the government department to the CC account or

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able to withdraw any money from the bank as it has been frozen. The company has been getting reminders from bank to submit the loan amount and the company is having cheques from Government department but the cheques are not deposited in the bank and RTGS done by Government Department against the works are getting bounced. The company is also not able to release payment to its employees and vendors.

- viii) When the name of the company was struck off on the register of companies, the company was carrying out the various infrastructural projects of the Government of Jharkhand.
- ix) The company filed income tax return for the financial year 2016-17, after approving it in the Annual General meeting held on 29.09.2017, but the same was filed with the Ministry of Corporate Affairs due to the name of the company remained struck off by the Registrar of Companies, Jharkhand, without giving proper notice.
- x) The company is law abiding and running a legitimate business, and also follow all government rules and remain in business since its incorporation. The content shown in above paragraph shows that the company is not a shell company and remain in business since incorporation.

10. The company has prayed, inter alia, for an order allowing it to restore the status of the company and also to file all the pending annual accounts and annual returns.

11. Heard the Ld. Pr.C.S. representing the petitioner company and perused the records including reports/submissions of ROC-cum-OL, Jharkhand. In the notice dated 20.03.2017, issued pursuant to sub-section (1) of section 248 of the Companies Act, 2013 and Rule 3 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016, ROC-cum-OL has expressed a reasonable doubt that the company has not been carrying on any business or operation for a period of two immediately financial years as the company has not filed Balance Sheet for more than two financial years and has not made any application within such period for obtaining the status

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of a dormant company under section 455. The Registrar of Companies then issued a public notice dated 18.04.2017 (Form No. STK-5) pursuant to sub-section (1) and (4) of section 248 of the Companies Act, 2013 and Rule 7 of Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016, inviting objections to the proposed removal of the name of the company off the register of companies, within thirty days from the date of publication of this notice. Neither the company nor its Directors could send any representation in response to the notice received or public notice published. Finally, Notice (Form No. STK-7) dated 14.07.2017 was published pursuant to sub section (5) of section 248 of the Companies Act, 2013 and Rule 9 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 striking the name of the company off the register of companies and the company is dissolved, on 21.06.2017. In the instant petition, the petitioner takes a plea that it recently came to know from the Master Data that the name of the company has been struck off pursuant to section 248 of the Companies Act, 2013. It appears from the Master Data that the status of the company as "struck off"; the last AGM was held on 22.09.2016; the Balance Sheet filed for the year ended on 31.03.2016 and that Rimi Kaushik, (DIN : 03619363) and Rajeev Singh (DIN : 03619365) are the Directors of the company. The petitioner has claimed that the company has been active since its incorporation and has been maintaining Bank Accounts with Vijaya Bank and in support of the said plea, the petitioner has placed evidences by way of the followings:

- (i) Statements of Accounts from Vijaya Bank (from 6.12.2012 to 19.03.2014), Bank statements from United Bank of India (UNI) Giridih from 01.04.2015 to 31.03.2016, and also from 01.04.2016 to 30.06.2016, 15.06.2016 to 15.09.2016, 15.09.2016 to 31.08.2016 (Annexure 'A2' to petition).
- (ii) Copies of Balance Sheets for the financial year 2013-14, 2014-15 and 2015-16 (Annexure 'A3', 'A4' & 'A5' respectively to petition)
- (iii) Minutes of AGM of the members of the company held on 21.09.2012, 27.09.2013, 25.09.2014, 28.09.2015, & 22.09.2016 (Annexure 'A6' to petition).

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- (iv) Copies of I.T. Returns for the Assessment year 2014-15, 2015-16 and 2016-17 (Annexure 'A7' to petition).
- (v) Commercial Tax Clearance Certificate dated 21.03.2016 and Registration Certificate dated 25.03.2015, issued by Government of Jharkhand, Commercial Taxes Department, Udyog Aadhar Memorandum (No. 925319948544) issued by Ministry of Micro, Small & Medium Enterprises (Annexure 'A8' to petition).

12. From the materials on record, it appears that the total annual revenues from operations as revealed from the copies of Balance Sheets for the financial years 2012-13, 2013-14, 2014-15 and 2015-16 were Rs.88,95,200/-, Rs.2,40,74,722/- and Rs.63,19,230/- and Rs.1,21,14,195/- respectively. Financial results / highlights as revealed from the Statement of Profit & Loss for the year ended on 31.03.2016 (with previous year's figures) are extracted hereinbelow:

PARTICULARS	As at 31-March, 2016	As at 31-March, 2015
i. Revenues from Operations (Gross)	10503000.00	5181780.00
Less Excise duty.	0.00	0.00
Revenues from Operations (Net)	10503000.00	5181780.00
ii. Closing Stock	1611195.00	1137450.00
iii. Total Revenue (I + II)	<u>12114195.00</u>	<u>6319230.00</u>
iv. Expenses :		
Purchases of stock-in-trade	8761578.00	4092402.00
Other Direct Expenses	1876984.00	1272027.00
Employees benefits expenses	995200.00	728000.00
Finance costs	197867.00	26878.00
Depreciation & amortization exp.	123858.00	149221.00
Other expenses	23225.00	12000.00
Total Expenses	<u>11978712.00</u>	<u>6280528.00</u>
v. Profit before exceptional item and tax (iii - iv)	135463.00	38702.00
vi. Exceptional Item	0.00	0.00
vii. Profit before tax (v + vi)	135483.00	38702.00
viii. Less: Tax expenses		
1) Current Tax	41864.00	10000.00
2) Tax relating to prior year	0.00	0.00
3) Deferred Tax (vii - viii)	0.00	0.00
ix. Profit for the year (vii - viii)	93619.00	28702.00

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13. The above mentioned statement appears to have been signed by the Managing Director and Director of the company as also the Auditor Rakesh Kumar, C.A., dated 14.09.2016.

14. It further transpires that the company has the following assets and liabilities as on 31.03.2016 as revealed from the copy of the Balance Sheet as on 31.03.2016 (with previous year's figures) are extracted hereinbelow :

<u>A. EQUITY AND LIABILITIES:</u>	As at 31-March, 2016	As at 31-March,2015
<u>(1) Shareholders' Funds:</u>		
a) Share Capital	5000000.00	100000.00
b) Reserve and Surplus	132321.00	38702.00
(2) Share Application Money	0.00	0.00
<u>(3) Non-Current Liabilities:</u>		
a) Long term borrowings	0.00	0.00
b) Deferred tax liability	0.00	0.00
<u>(4) Current Liabilities:</u>		
a) Short-term Borrowings	253095.50	1766582.00
b) Trade payables	5869757.05	7298039.43
c) Other current liabilities	12000.00	12000.00
d) Short-Term Provisions	41864.00	10000.00
	<u>11309037.55</u>	<u>9225323.43</u>
 <u>B. ASSETS:</u>		
<u>1) Non-Current Assets</u>		
a) Fixed Assets:		
Tangible Assets	2077242.00	2201100.00
b) Other Non-Current Assets	0.00	0.00
c) Deferred tax Assets	0.00	0.00
<u>2) Current Assets:</u>		
a) Trade Receivables	5498241.00	1137450.00
b) Inventories	1611195.00	2919281.00
c) Cash and Cash Equivalents	2080495.55	2967492.43
d) Short Term Loans & Advances	41864.00	0.00
	<u>11309037.55</u>	<u>9225323.43</u>

15. The relevant provision of Sub-Section (3) of Section 252 of the Companies Act, 2013 reads as thus: "If 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

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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 to 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, be 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. It has come on record that the petitioner company has filed its Balance Sheet as on 31.03.2016, as will be evident from the Master Data. It is evident from the Balance Sheet as at 31.03.2016 that it has fixed and other assets, and generating revenues from operations It has also closing stock (stock in trade), as on that date. Besides holding Annual General Meetings for the financial years 2013-14 to 2016-17, the company has also filed I.T. Returns for the Assessment year 2013-14 to 2016-17. Further, the petitioner is also having registration with Central Sales Tax, Value Added Tax, Goods and Services Tax, and Udyog Aadhar Memorandum. The petitioner has admitted that due financial statements and annual returns have not been filed. Taking into account of these aspects, it would not be reasonable to assume that the company has not been carrying on any business or operation for a period of two immediately preceding financial year and thus, it cannot be regarded as a defunct company. However, there is no explanation from the petitioner as to why it has not filed its upto date statutory returns within the stipulated time, as mandatorily required. The petitioner has not disclosed in the petition that the company has not filed the Financial Statements / Balance Sheets and the Annual Returns for the year 2013, 2014, 2015 as also 2017 although annual general meetings were held regularly within due dates, as claimed in the petition. It has also not disclosed as to why the Balance Sheet as at 31.03.2016 has been filed when due returns were not filed for the year 2013,

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2014, & 2015 and the 2016 (Annual Return). The non-filing of statutory documents lead the Registrar of Companies to infer and believe that the company was inoperative and therefore, its name was struck off on 21.06.2017 after following the due procedure. Moreover, the company and its Directors/officers did not care to respond to the notice issued by Registrar of Companies on 20.03.2017 and public notice (STK-5) on 18.04.2017. This is a serious lapse on the part of the company and its Directors / Officers for non-compliance of the mandatory statutory requirements under the Companies Act, 1956/2013.

17. In view of the foregoing facts and circumstances and the statutory provisions as mentioned above, this Tribunal is of the view that it would be just and proper to order restoration of the name of the company to the register of functional companies, as maintained by the Registrar of Companies (the respondent). Having noticed from the Master Data, the last document filed is only the Balance Sheet as on 31.03.2016 and no other statutory returns were filed for the previous and subsequent year(s) which are mandatorily required under the Companies Act, 1956/2013, primary responsibility for ensuring that proper returns and statutory documents are filed within the stipulated time line, as mandated by the statute and the rules prescribed thereunder, remains with the management of the corporate entity. Moreover, the Registrar of Companies in his second report dated 15.12.2017 has expressed his no objection to restore the name of the petitioner company, if company is ready to file arrear / due returns under the provisions laid down under section 403(1) proviso-1 of the Companies Act, 2013 read with the Companies (Registration of offices and Fees) Rules, 2014.

18. Subject to filing all the arrear statutory documents in the requisite forms together with filing fees and additional filing fees and other charges, if any, in addition to paying costs of Rs.20,000/-(Rupees Twenty Thousand) in the account of Prime Minister's Relief Fund by the petitioner within four weeks from date, the Registrar of Companies shall restore the name of the Company to the register of active/functional Companies, as if the name of the Company had not been struck off, in accordance with the provisions of sub-section (3)

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of Section 252 of the Companies Act, 2013 and allow access of the relevant portal to the Company and its authorized officers. The said money shall be deposited in the same account of the Central Government where filing fees and penalties in such regard are usually received.

19. The Appeal No. 488/KB/2017 is decided and disposed of on the above terms with the following further directions:

- a) The petitioner shall deliver a certified copy of this order to the Registrar of Companies, Jharkhand in the requisite Form within 30 days from the date of this order;
- b) On such delivery, the Registrar of Companies, Jharkhand do, in his official name and seal, publish the order in the Official Gazette and shall cause the name of the company to be restored in the register of companies;
- c) The petitioner shall pay to the Registrar of Companies, Jharkhand, his costs of, and occasioned by, the petitioner;
- d) The petitioner shall file all pending financial statements and annual returns with the Registrar of Companies, Jharkhand and comply with the requirements of the Companies Act, 2013 and the Rules notified thereunder within the stipulated time as mentioned hereinabove.
- e) The petitioner company is also directed to file an affidavit with the concerned Registrar of Companies to the effect that during the intervening period, the petitioner company did not involve itself in any unlawful activities and the company was not used as means to transact any tainted money during the period of demonetization.

20. This order will not prejudice the power of the Registrar of Companies (the Respondent) to proceed and initiate any action in accordance with law, as he may deem fit and proper, against the Company and its Directors/Officers, for non-filing of the statutory returns within the stipulated

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time line, as mandatorily required under the Companies Act, 1956/2013 read with the Rules notified thereunder.

21. Urgent certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

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(Jinan K.R.)
Member (J)

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(V.P. Singh)
Member (J)

Signed this

19th

day of January, 2018