

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

C.P.No.669/KB/2017

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

IN THE MATTER OF :

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

IN THE MATTER OF :

**CROPECO EXIM PRIVATE LIMITED (Company Name Struck Off by
Registrar of Company)**

And

**MANISH MAITI, residing at 73/3A/2, A.C Town Road P.O- Rishra, Hoogly,
West Bengal 712248, within the aforesaid jurisdiction**

.....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

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Order Delivered on : 05.02.2018.

Coram: Shri Jinan K.R., Member (J)

For the Financial Creditor : Mr. A.K. Upadhyay, Advocate.

ORDER

Per Jinan K.R, Member (J)

1. This is an appeal filed by M/s Cropeco Exim Private Limited Company, represented by Mr. Manish Maiti, a Shareholder who is holding 5000 (50%) shares in the company 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.

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

(a) M/s Cropeco Exim Private Limited (is referred to as "Company") is a private Limited Company and was incorporated on 13.08.2013 in the State of West Bengal.

(b) The Authorized share capital of the Appellant Company is Rs. 1,00,000/- (Rupees One Lakh) divided into 10,000 Equity Shares

of Rs.10/- (Rupees Ten) each with power to increase and reduce the capital of the Company and to divide or sub divide the shares in capital for the time being into several classes and to attach thereto respectively such preferential qualified or special rights, privileges or conditions as may be determined by or in accordance with the Articles of the Company for the time being and to modify or abrogate of any such rights privileges or conditions in such manner as may be permitted by the Act, or provided by the Articles of the Company for the time being.

(c) The main objects of the Company, in brief, as revealed from the Memorandum of Articles of Association are to carry on the business to buy, sell, deal, barter, import or export whether the wholesalers or retailers or as exporters or importers as principles of agents or brokers or otherwise or to catch fish and to procure and manufacture any substances or articles wholly or partially from fish or sea foods for human or animal consumption and to carry out the business of keepers, ware housemen and transporters of fish and also incidental business to let out on hire import, export and deal in all factories, works, plant, machinery, tools, utensils, appliances and carrying similar other business of being profitable to deal with in connection therewith and to, experiment with and deal in all products or residual and by products incidental or to obtained in any of the business.

(d) There are two key managerial personnel being Mrs. Shalini Basu and Mr. Manish Maiti appointed as the Directors of the Company since the incorporation of the company. The appellant company had commenced operations after incorporation and has been

doing business ever since, without any break. But due to inadvertent mistake the Petitioner Company failed to file its statutory returns and other documents for the period from 31.03.2014 to 31.03.2016.

(e) The appellant having 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 2013-14, 2014-15, 2015-16 marked and annexed as **Annexure- A-2**.

(f) The appellant further states that it has been carrying on the business and is in operation and the same would appear from the balance sheet of the company. However, there are no pleadings in the appeal about the nature of the business allegedly carried on by the company or that regular meeting were conducted but produced Directors Report for the year ended 31st March, 2014 and extract of Annual Return ending 31.03.2015 marked and annexed as '**Annexure A-2**'. Directors report for the Financial year ending 31st March, 2015 and onward, not seen produced.

3. The appellant further contends that due to inordinate delay in replying to the notice of the respondent, ROC under sub-section (1) of 248 of the Companies Act, 2013 had already removed the name of the appellant and when the removal brought to the notice 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

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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.

4. According to the appellant, the act of the respondent 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.

5. Heard Ld. Counsel for the appellant. Perused the record. ROC, WB filed its reply. The appellant had filed a rejoinder answering certain objection raised by the ROC, WB.

6. The 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 the date of incorporation.

7. The ROC WB in its objection contends that complying with the provision of section 248 (1) of the Companies Act, 2013 issued notice (in e-form STK No.5) and after the expiry of the statutory time period to file the documents had suo moto struck off the name of the company on 09.06.2017. The ROC, WB has stated that the appellant name appears at Sl. No 1520 of the Registrar of Companies notice STK No. 7 of the Registrar of Companies dated 30.06.2017 and the same was published in the official Gazette on 15.07.2017.

8. The 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 returns 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 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.

9. Admittedly, the appellant failed to submit balance sheet and annual returns for three consecutive years starting from 31.03.2014. Therefore, ROC, WB in exercise of the power conferred upon ROC under section 248 of the Companies Act, 2013 the name of the company was struck off from its register after confirming all formalities as provided under the Act. ROC, West Bengal is satisfied that the company was not carrying on business or any operation for the last three years and hence strike off the name of the company under Section 248 of the Companies Act. Therefore, there is no illegality or irregularity committed by the ROC in striking off the name of the company.

10. Ld. Counsel for the appellant submits that the appellant company is a going concern and carrying on business since the incorporation of the company till date. According to him upon the production of the balance sheets and annual returns from 31.03.2014 to

31.03.2017 which is duly certified by the statutory auditor proves that the appellant company as an ongoing concern. According to the Ld. Counsel the balance sheets and annual returns produced along with the appeal for the missing years, proves that the company is carrying on business .

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

12. The Director's Report in the year ended 31st March, 2014 not at all reveals that any business as set out in the Memorandum and Articles of Association has been carried on by the appellant as alleged. The company till date doesn't plan to explore new opportunity in the market or venture into any other business prospect, stated by the director in the report. The nature and the course of business remains to be the same. What business appellant has been carried on is silent in the report. The profit for the three years as revealed from the balance sheet is the following:

1. 2013-2014	-	6,284
2. 2014-2015	-	17,924
		(the balance got forwarded to 24,208)
3. 2015-2016	-	15,184

13. Looking into net profit of the company, reveals that the company is not gaining any profit. During the year 31st March, 2014 under the review the company incurred profit of Rs. 6,284 /- as compared to loss of Rs. 17,924 /- in the previous year. The same being carry forwarded in the 2014-15 and again with a loss of Rs 15,184. During the given years the company was unable to achieve profit. However, from the careful scrutiny of the Director's Report, statement of profit and loss, financial statement and balance sheet it is understood that the company's nature of the business remains the same and no active business has been carried on as alleged. But, it shows that the company is operational even though no active business is carried on.

14. At this point it 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. This appeal has been filed in time. Therefore, the appeal is liable to be allowed in the interest of justice, equity and good conscience as held in the above cited decision.

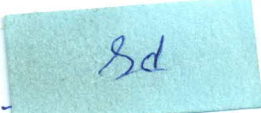
17. In the result by exercising the powers conferred on this Tribunal under Section 252 of the Companies Act, 2013, this appeal is allowed upon the following directions:

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- (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 45 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 under miscellaneous fee by mentioning particulars as "payment of cost for revival of company pursuant to orders of Hon'ble NCLT in CP NO.669 /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.

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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) 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.


(Jinān K.R.)
Member (Judicial)

Signed on 05th day of February 2018.