

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

C.P.NO.726/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 :**

**M/S GROWING GLORY REGENCY PRIVATE LIMITED (Company Name Struck Off By Registrar of Company) & Mr. Syed Imtiyaz Alli.**

And

**MR. SYED IMTIYAZ ALLI, residing at Plot No. 106, Block-II Royal Garden, Patia, Post-KIIT, Bhubaneshwar- 751024 (Odisha)**

.....Appellant/Petitioner

And

**Registrar of Companies, having its Office Cuttack, 3<sup>rd</sup> Floor, Corporate Bhawan, Plot No. 9(P), Cuttack, Orissa, PIN-753014**

.....Respondent

Sd

**Order Delivered on 07.02. 2018**

**Coram:**

**Jinan K.R., Member (J)**

For the Petitioner Company : 1. Mr. Siddhartha Murarka, C.S.  
2. Mr. Abhijit Nagee, C.S.

**ORDER**

**Per Jinan K.R, Member (J)**

1. This is an appeal filed by the Company by name Mr. Syed Imtiyaz Ali, Director & Shareholder of M/s Growing Glory Regency Private Limited holding 7500 (50%) paid up 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 Growing Glory Regency Private Limited (is referred to as "Company") is a private Limited Company and was incorporated on 02.12.2008 in the State of Orissa.

(b)The Authorized share capital of the Appellant Company is Rs. 10,00,000.00/- (Rupees Ten Lakh) divided into 1,00,000 (One Lakhs) Only Equity Shares of Rs. 10/- (Rupees Ten) each with power to increase and reduce the capital of the Company and to divide shares in the capital into several classes and to attach thereto such preferential, deferred, qualified and special voting rights, privileges or conditions in such manner as may be from time to time be determined by the company subject to the provisions of the Companies Act, 1956.

(c)The main objects of the Company, in brief, as revealed from the Memorandum of Articles of Association are to carry on all kinds of Agency business including that of clearing agents, freight contractors, steamer agents, forwarding agents, licensing agents and general brokers. To carry on the business of mine owners and to carry on metallurgical operations and/or prospect, get, work, lease, crush, smelt, calcite, refine, dress, make merchantable, sell, deal in manganese, iron ore, chrome ore, bauxite, tin, copper, graphite, china clay and other minerals, ores and substances. To carry on the business of and act as dealers, distributors, manufacturers, packers or otherwise of consumer goods Etc.

(d)There are two key managerial personnel being Saheeda Parween and Syed Imtiyaz Alli appointed as the Directors of the Company since the incorporation of the company. However, one Syed

Imtiyaz Alli Director & Shareholder of the **Growing Glory Regency Private Limited** holding 7500 (50%) paid up shares in the company. The appellant company had commenced operations after incorporation and has been doing business ever since, without any break.

(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 2012-13, 2013-14, 2014-15, 2015-16 marked and annexed as **Annexure- A-9**.

(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 but produced Directors Report for the year ended 31<sup>st</sup> 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 31<sup>st</sup> March, 2017 is also produced.

3. It is the case where the name of the appellant Company was struck off from the Registrar of the Companies under Section 248 of the Companies Act, 2013, by a suo moto action of the Respondent, after

issuing the notification under Section 248(5) in the Official Gazette dated 21.06.2017 . The aforesaid action was taken by the respondent on account of failure of the appellant to file its statutory returns and other documents since the financial year ending 31.03.2012, giving rise to the reasonable belief that the company was not operational. Subsequently, the company's name been struck off issuing a Public Notice under Form No.STK-5/5A and finally after the expiry of the time mentioned in the notice the respondent struck off the name from its register and published the same in Form STK-7 in the Official Gazette, and the company stood dissolved on 21.06.2017.

4. A reply in the form of report has been filed by the Respondent dated 1.12.2017 and admitted that the name of the company was struck off in pursuance to non filing of the statutory compliance of filing of Annual accounts and Returns that could not be filed from the 2012 till 2017. It has also been taken note that no rejoinder has filed by the appellant to the report filed by the ROC. Hence, reliance has been made based on the petition filed by the appellant.

5. The appellant contends that when the removal brought to the notice of the appellant a 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 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.

6. 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.

7. Heard the Learned counsel of the appellant. The ROC, Cuttack, Odisha in its report 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 31/3/2012 and annual return from the date of incorporation. The respondent prays for allowing this appeal on its own merit.

8. 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 respondent.

9. Nothing forthcoming to show that the appellant company has filed its balance sheet from 31/3/2012. Even if appellant approached the respondent, it was after striking off the company. There is no pleading at all that striking off the company was in violation of any of the provisions of

the Company's Act. Therefore, we find no illegality in striking off the name of the company by the ROC, Orissa.

10. Ld. Counsel for the appellant submits that the appellant 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 from 31.03.2012 to 31.03.2017 which is duly certified by the statutory auditor proves his said contention. 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.

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. Reading the Director's Report in the year ended 31<sup>st</sup> March, 2016 it is understood that the company is carrying on business of builders and contractors and generating revenue, and running in profit. As per the balance sheet the rate of profits shown is as follows:-

(Year)		(Rupee)
1. 2012-2013	-	13,77,810.10
2. 2013-2014	-	30,062.74
3. 2014-2015	-	24,849.00
4. 2015-2016	-	9,968.00
5. 2016-2017	-	31,510

12. Looking into the profit and loss account and that 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

. 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.

13. 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 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".*

14. 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”.*

15. The above said discussion lead to a conclusion that the company is in operation however failed to submits statutory returns like Balance Sheets and Annual Returns since the financial year ended 31.03.2012. The contention that one of its relative approached the ROC for rectification of mistake committed on the side of the company seems to be unbelievable in the absence of supporting evidence. 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 appeal is liable to be allowed in the interest of justice, equity and good conscience as held in the above cited decision.

16. 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:

- (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 2012-13, 2013-14, 2014-2015, 2015-2016 and 2016-17 along with prescribed fees/ additional fee/fine as decided by ROC within 30 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](http://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.726 /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.
- (6) On such delivery and after duly complying with above directions, the Registrar of Companies, Orissa is directed to, on his office name and seal, publish the order in the official Gazette;

- (7) 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.

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



**(Jinān K.R.)  
Member (Judicial)**

*Signed on 7th day of February 2018.*