

[link to top](#)

LAWS(NCLT) 2018 1 724

NATIONAL COMPANY LAW TRIBUNAL

Coram :- Bikki Raveendra Babu, J.

Decided on 2018 January 15

Company Appeal 36/252/NCLT/AHM/2017

JITESH KAPURCHAND PALRECHA (MECHANICAL And HEAT TREAT WORKS PVT LTD)

VERSUS

REGISTRAR OF COMPANIES, GUJARAT

Advocates:

PRATIK THAKKAR

[] Referred Acts:

Companies Act, 2013, S. 164(2), S. 248(1), S. 248(2), S. 248(5), S. 252(3)

Citations:

LAWS(NCLT) 2018 1 724,

Expert View:

- A. **Upon issuance of notice, the ROC has filed Representation dated 13th November, 2017 through his Deputy Registrar wherein he has denied the allegations and contentions raised in the Appeal, and represented that as the Company has failed to file its statutory returns since financial year 31__ .**
- B. **3__ . 2017 and 25__ . 2017 were issued on the Company, and finally its name was struck off vide notice issued under Section 248(5) of the Act on 21__ . 2017 and the same was published in the Official Gazette of Government of India__ .**
- C. **Therefore, this Appeal is maintainable__ Therefore, this Appeal is within time__**
- D. **Considering gill the aforesaid aspects, this Tribunal is of the considered view that it is just and equitable to restore the name of the Company, M/s. -- The Appeal stands disposed of accordingly.**

JUDGMENT / ORDER

1. This Appeal is filed under Section 252(3) of the Companies Act, 2013 by the Appellant, Mr. Jitesh Kapurchand Palrecha seeking restoration of the name of the Company, i.e., M/s. Mechanical And Heat Treat Works Private Limited as its Director/ Member in the Register of Companies maintained by the Registrar of Companies, Gujarat, Ahmedabad ["ROC for short].

2. The facts in brief, which necessitated the Appellant to file this Appeal, are as follows;

2.1. It is stated that the ROC vide letter No. 248(1) /2017 dated 09/3/2017, issued notice in Form STK-5 on 25.4.2017 under subsection (1) and (2) of Section 248 of the Companies Act had shown intention to remove the name of the Company from the Register of Companies and the same was received by the Company. Thereafter, the ROC vide another Notice in Form No. STK-7 bearing No. ROC/AHMD/248(5) /STK-7/PUB/I dated 21.6.2017 has struck off the name of the Company from the Register of Companies.

2.2. According to the Appellant, neither he nor his Company received any further notice. The Appellant submitted that the Company has been active since incorporation; the Company was operational when it was struck off; the Appellant had instructed his Company Secretary to give reply to the notice dated 25.4.2017 but such instruction was not complied with by the Company Secretary; and if the name of the Company is not restored the Appellant and shareholders of the Company will suffer irreparable loss and hardship.

3. Upon issuance of notice, the ROC has filed Representation dated 13th November, 2017 through his Deputy Registrar wherein he has denied the allegations and contentions raised in the Appeal, and represented that as the Company has failed to file its statutory returns since financial year 31.3.2005 notices dated 6.3.2017/9.3.2017 and 25.4.2017 were issued on the Company, and finally its name was struck off vide notice issued under Section 248(5) of the Act on 21.6.2017 and the same was published in the Official Gazette of Government of India.

4. The Appellant along with the Appeal filed copies of statement of bank from 1.1.2008 to 31.8.2017 as well as copies of Acknowledgements of statements of Value Added Tax and other documents. The Appellant also filed Additional Affidavit dated 14th November, 2017 enclosing therewith documents such as copies of bank statements for the month of October and November, 2017; copies of statements showing contribution towards Employees State Insurance Corporation by the Company.

5. This Appeal is filed by the Company under Section 252(3) of the Companies Act. The Appellant being the Director is entitled to file Appeal seeking restoration of the name of the Company. Therefore, this Appeal is maintainable. The Company, M/s. Mechanical And Heat Treat Works Private Limited was struck off on 21st June, 2017 from the Register of Companies and the same was published in the Gazette of India. This Appeal was filed on 3rd October, 2017. Therefore, this Appeal is within time.

6. From the material available on record, the only reason for striking off the name of the Appellant Company, M/s. Mechanical And Heat Treat Works Private Limited is that the Company has failed to file its statutory returns since 31.3.2005.

7. The material on record also goes to show that the Company is an ongoing concern and has been doing business. The Registered Office of the Company is situated at 109, GIDC, Bhadakhora, Silvassa, Vapi, Gujarat.

8. Considering all the aforesaid aspects, this Tribunal is of the considered view that it is just and equitable to restore the name of the Company, M/s. Mechanical And Heat Treat Works Private Limited, in the Register of Companies maintained by the ROC, Gujarat, Ahmedabad; and to remove the defects of disqualification if any as Directors, imposed under Section 164(2) of the Companies Act, 2013; and accordingly there shall be directions. The Company's name shall be restored upon the Appellant complying with the following conditions;

(i) The Appellant shall file all over due statutory returns with fee and additional fee as required under the Companies Act;

(ii) The Appellant shall publish a Notice in leading newspapers circulating in the District as well as in the Official Gazette of the Government of India with regard to the restoration of the name of the Company in the Register of Companies maintained by the Office of the Registrar of Companies, as per the draft notice approved by the Registrar of Companies at the expenses of the Appellant;

(iii) The Appellant shall also pay an amount of Rs. 10,000/- to the Ministry of Corporate Affairs by way of Demand Draft drawn on Nationalised Bank towards the cost incurred by the Government in striking off the name of the Company within 3 (three) weeks from the date of this order.

9. The Appeal stands disposed of accordingly.

Copyright © Regent Computronics Pvt.Ltd.