

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.305
Appeal/41(AHM)2023

Order under Section 252(1) of Co. Act, 2013

IN THE MATTER OF:

Vanitaben Gaurav Bhatt
(La'Critique Pharma Pvt Ltd)
V/s
Registrar of Companies,Gujarat

.....Applicant

.....Respondent

Order delivered on: 15/05/2024

Coram:

Mr. Shammi Khan, Hon'ble Member(J)
Mr. Sameer Kakar, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The case is fixed for pronouncement. The order is pronounced in the open court, vide separate sheet.

-Sd-
SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-
SHAMMI KHAN
MEMBER (JUDICIAL)

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT-I**

Co. Appeal No. 41/252/NCLT/AHM/2023

[Application under Section 252 of the Companies Act, 2013]

In the matter of:

M/s. La' Critique Pharma Private Limited

Having its registered office at:

FF/06, Darshnam Avenue,

B/s. Darshnam Central Park, Sayajigunj,

Vadodara, GJ, 390001.

In the matter between:

Ms. Vanitaben Gaurav Bhatt

Residing at:

B-1/55, Shri Amarshradha Soc.

Danteshwar Ring Road,

Tarsali, Vadodara – 390009 (GJ)

..... Appellant

VERSUS

Registrar of Companies, Gujarat

Having office at:

Registrar of Companies,

ROC Bhawan, Opp. Rupal Park Society,

Behind Ankur Bus Stop, Naranpura,

Ahmedabad – 380013, Gujarat.

..... Respondent

Order Pronounced on: 15.05.2024

CORAM:

SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)

SH. SAMEER KAKAR, HON'BLE MEMBER (TECHNICAL)

APPEARANCE:

For the Appellant : Mr. Mayank P. Shah, Ld. Advocate

For the Appellant/RoC : Ms. Vipal Solanki, Company Prosecutor

Co. Appeal No. 41/252/NCLT/AHM/2023

In the matter of: M/s. La' Critique Pharma Private Limited

O R D E R
[Per: Bench]

1. The present application has been filed by Ms. Vanitaben Gaurav Bhatt, in the capacity of a Registered Member of the applicant company, **M/s. La' Critique Pharma Private Limited** under Section **252(1)** of the Companies Act, 2013 and has prayed for the grant of following reliefs:

“A. The Appellant prays for the order of restoration of the name of Company i.e. M/s. La' Critique Pharma Private Limited in the Register of Companies maintained by the office of the Registrar of Companies, Gujarat in the best interest of the Company and its Stakeholders.

B. Such order which requires Registrar to change the status of the Company from 'Strike off' to 'Active' so that due documents and forms of preceding Years as applicable can be submitted on MCA registry.

C. To give such directions and make such provisions as deem just for placing the Company and all other persons in the same position as nearly as may be as if the Company' name had not been struck off from the register of companies.

D. And pass such other order/orders and give such direction/directions as may deem just and proper in terms of Section 252(1) of the Companies Act, 2013.”

2. The brief facts of the matter are tabulated below:

Sr. No.	Particulars	Facts
a)	Name of Company	M/s. La' Critique Pharma Private Limited
b)	CIN No.	U51909GJ2019PTC109588
c)	Date of Incorporation	21.08.2019
d)	Registered Office Address	FF/06, Darshnam Avenue, B/s. Darshnam Central Park, Sayajigunj, Vadodara – 390001, Gujarat.
e)	STK-5 Date	24.01.2022
f)	STK-7 Date	29.03.2022
g)	Reason of Strike-off	Non filing of statutory returns with MCA

3. It is stated that the authorised share capital of the company is Rs.1,00,000/- divided into 10,000 Equity Shares of Rs.10/- each and the issued, subscribed and paid-up equity share capital of the company is Rs.1,00,000/- divided into 10,000 equity shares of Rs.10/- each. Further, there were two (02) Equity Share Holders in the Company as on the date when the name of the Company was struck off by the Registrar of Companies, Gujarat. In support of this the applicant has annexed the certificate of Chartered Accountant with the instant appeal as Annexure-K on page 55.

4. Brief objects of the company, as stated in the Memorandum of Association of the Company which is

filed along with the application as Annexure-H, on page nos. 31 to 50 of the instant application viz,

“To manufacture, formulate, process, import, export, wholesale and/or retail trade in all kinds of pharmaceuticals, own brands of injectable & oral products in the critical care segment & cardiovascular segment, anti-biotics, drugs, medicines, biologicals, nutraceuticals, healthcare, ayurvedic and dietary supplement products, medicinal preparations, vaccines, chemicals, chemical products, dry salters, mineral waters, wines, cordials, liquors, soups, broths and other restoratives or foods and also to deal in medicinal goods such as surgical instruments, contraceptives, photographic goods, oils, perfumes, cosmetics, patent medicines, soaps, artificial limbs, hospital requisites, proprietary medicines, veterinary medicines and tinctures extracts and to carry on the business of vialling, bottling, repacking, processing of tablets, capsules, syrups, injections, ointments, etc. and also to carry on the business of chemists, druggists, buyers, sellers, agents, distributors and stockists of all kinds of pharmaceuticals and allied products.”

5. It is stated that the applicant herein is holding 51% (i.e. 5100 shares) of the total shareholding of the company, out of total 10000 shares since its incorporation.

6. It is stated that the Board of Directors was composed of two directors. The list of directors as on the date when the company was struck off, is also enclosed as Annexure-L on page 56 as under:

Sr. No.	Name of Director	DIN	Date of Appointment
01	Vanitaben Gaurav Bhatt	08541891	21.08.2019
02	Laxmikumari Chirag Bhatt	08541892	21.08.2019

7. It is submitted that the Company has commenced its business within one year of its incorporation and it was carrying on the business operations. In support of such facts, that the company never discontinued its business operations since its incorporation, the applicant annexed financial statements of the Company for the F.Y. 2019-20, 2020-21 and from the provisional F.Y. 2021-22 detailed as under:

Sr. No.	Particulars	F.Y. 2019-20	F.Y.2020-21	F.Y.2021-22
1.	Revenue from operations	-	2454422/-	7560388/-
2.	Net Income	(96967/-)	23486/-	145193/-
3.	Short Term Borrowings	890510/-	1553510/-	1464510/-
4.	Trade Receivables	-	690715/-	1420623/-

The copies of Audited Financial Statements of the Company for the F.Y. 2019-20, 2020-21 and the copies of provisional Financial Statements of the company for the F.Y. 2021-22 are annexed as Annexure-M to the present appeal. Further, the copies of Income tax acknowledgement of the company for the proceeding F.Y. are enclosed as Annexure-P.

8. It is stated that the company has never applied for obtaining the status of Dormant Company in terms of the provisions of the Companies Act, 2013 and Rules made thereunder, as the company is carrying on the business operations and has availed the loans and having the assets on its name.

9. It is submitted that the company received the subscription money from the subscribers as they have agreed at the time of subscription within the period as prescribed under Section 10A of the Companies Act, 2013 and it has took the note of the same by way of passing the Resolution at the meeting of Board of Directors of the company held on 10.12.2019. The certified true copy of Board Resolution passed at the meeting is attached as Annexure-O to the present application.

10. It is further stated that the company had maintained its all books, papers, deeds, documents, writings, vouchers, registers, records, financial statements but the non-filing of Financial Statements, Returns and documents with the Registrar of Companies, Gujarat in terms of Provisions of the Companies Act, 2013 were never committed intentionally and the same has been committed due to the negligence on the part of the Board of Directors wherein, they failed to make themselves

aware and vouch on the compliances applicable to the company and such lapse of compliances were noticed when the status of the company was marked as Strike Off.

11. The applicant, in Para-5(F), page 21 has mentioned that she is intending to restore the company's name in order to protect the interest of the company and its stakeholders and further to make all the necessary pending overdue compliances under every law which are for the time being applicable to the company through which, the interest of the company and its directors can be safeguarded.
12. The applicant, in the same paragraph has mentioned as:
"The Appellant undertakes the responsibility of filing all the overdue returns and documents of the Company with the MCA registry on its restoration and shall also comply with all the pending compliances due under the other statute applicable to the company."
13. The appellant further claims that the instant petition is made within the period of limitation as prescribed under Section 252(1) of the Companies Act, 2013.
14. It is submitted that the Corporate Person was not aware of the fact of the public notice issued in the form of STK-7 vide public notice no: ROC/GJ/248(5)/ STK-7/ Drive-IV/2022 dated 29.03.2022 and was failed to raise the

objection against the said notice within time period prescribed in such notice.

15. It is submitted that the Corporate Person had been active since its incorporation and has also been maintaining all the requisite documentation as per the provisions of the Companies Act, 2013 as amended from time to time.
16. The applicant submits in the application that non filing of financial statements and annual returns were committed by the company unintentionally. It is stated that due to negligence on the part of the Board of Directors, they failed to keep watch on these compliances the name of the company got struck off. It is confessed that the non-filing of financial statements and annual returns was only due to inadvertence and without any mala-fide intention.
17. A reply on behalf of Respondent was received vide inward diary no.R5588559, dated 09.08.2023 by one Mr. Indrajit Vania the Dy. Registrar of Companies, Gujarat.
18. It is stated by the Respondent/RoC that due to failure in filing of its statutory returns for a continuous period of more than two years, the name of the company was struck off in a *suo-moto* action under the provisions envisaged under Section 248(1)(c) of the Companies Act, 2013 and also in pursuance of the circulars issued by

the Ministry of Corporate Affairs, Government of India from time to time. However, from the perusal of the report, it is seen that there is no substantial objection raised.

19. A rejoinder has been filed by the Appellant vide diary no.D-2227 on 12.03.2024 by stating para-wise reply in response of the RoC's reply. We have gone through the rejoinder.
20. Heard Ld. Counsel for the Applicant, Ld. Company Prosecutor and perused the pleadings as well as record.
21. As per the material available on record, the Company was a going concern as it was doing business. We consider the plea of the appellant and the Respondent/RoC.
22. The Appellant is seeking restoration of the company **M/s. La' Critique Pharma Private Limited** as maintained by the RoC. It is the plea of the applicant that due to negligent on the part of the Board of Directors, the company could not file the copies of Financial Statements and Annual Returns for any of these years with the Registrar of Companies, Gujarat. However, the applicant claims that the company is a going concern and doing business and in support of the same, it has filed certain documents which indicated that the company was operational.

23. Thus, taking into consideration the provisions of Section 252 of the Companies Act, 2013 which vests this Tribunal with a discretion where the Company whose name has been struck off and such Company is able to demonstrate that there is running business as on the date when the name was struck off and also keeping in consideration that it is just to do so, can restore the name of the Company in the register and in the interest of all the stakeholders including members of the Company, its employees as well as the revenue and it is the Applicant itself who seeks restoration of the name of the Company in the register being maintained by RoC and in the above said circumstances the Application is allowed subject to the following directions:-

- (i) The Registrar of Companies, Gujarat, is ordered to restore the original status of the Applicant Company viz. **M/s. La' Critique Pharma Private Limited**, as if the name of the Company has not been struck off from the Register of Companies with resultant and consequential actions like changing the status of Company from "**strike off**" to "**Active**".
- (ii) The Company shall within a period of 30 days from the restoration of the Applicant Company's name in the register being maintained by the RoC, the Applicant/Petitioner will file *inter-alia* its annual returns and balance sheets as well other

compliances statutorily required to be made under the Companies Act, 2013 for the period from which there has been default with requisite charges/fees as well as additional fee/late charges.

- (iii) During the hearing on 09.05.2024, Mr. Mayank P. Shah, Advocate appearing on behalf of the applicant has volunteered to pay a sum of **Rs. 1.00 Lakh** as cost. Taking into consideration submission of Learned Counsel for the applicant, the restoration of the company name is subject to payment of cost of **Rs.1.00 Lakh** through online payment in *www.mca.gov.in* under miscellaneous fee by mentioning the particular as “payment of cost for revival of the company.”
- (iv) Till all compliances are made by the Company, the Company shall not alienate or dispose of any of its valuable assets.
- (v) It is further observed that by virtue of this order of restoration of the name of Company in the register it will not entitle the Directors of the Company whose names in case have been disqualified by virtue of provisions of Section 164 of the Companies Act, 2013 by the Respondent/RoC automatically to be restored to directorship except in accordance with law.

- (vi) An affidavit of compliance of the aforesaid directions shall be filed by the Applicant within a period of 2 months from the date of this order.
- (vii) The shareholders of Applicant Company shall jointly submit an Undertaking to the Registrar of Companies stating therein that the accounts of the Company were not used as means to transact tainted money during the period of demonetization.
- (viii) Further, this order allowing the Application shall also not circumscribe the power of the respondent to proceed against the Appellant Company and its Directors as mandated for alleged late filing of any forms, documents, returns and such other compliance under the provisions of Companies Act, 2013.
- (ix) The Company Appeal No.41(AHM)2023 is allowed and disposed of accordingly.
- (x) A certified copy of this order, if applied for, be issued upon compliance with all requisite formalities.

**-Sd-
SAMEER KAKAR
MEMBER (TECHNICAL)**

**-Sd-
SHAMMI KHAN
MEMBER (JUDICIAL)**

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