

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-II**

Company Appeal No. 14 of 2023

Under section 252 of the Companies Act,
2013

IN THE MATTER OF

Mr. Shishir Betharia

(Shareholder and Director of the MECA-
BETHARIA Engineering Limited)

401, Shiv Shankar, Plot no. 29, 10th North
South Road, JVPD, Juhu Scheme, Vile parle,
Mumbai - 400049.

... Petitioner/Applicant

V/s.

Registrar of Companies

100, Ground Everest, Marine Drive,
Mumbai, Maharashtra - 400002.

... Respondent

Order delivered on: -28.06.2024

Coram:

Hon'ble Shri Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Shri Anil Raj Chellan, Member (Technical)

Appearances:

For the Petitioner : Adv. Chandrakant Mhadeshwar

For the RoC : Mr. Shivraj Ranjeri

ORDER

Per: Coram

1. The present Company Appeal is filed by Mr. Shishir Betharia, in the capacity as a shareholder and director of the Company namely, MECA-BETHARIA Engineering Limited (“the Company”) under section 252 of the Companies Act, 2013 aggrieved against the order of strike off carried out by the Respondent namely, the Registrar of Companies, Mumbai under Section 248 of the Companies Act, 2013. The Applicant seeks to direct the Respondent to restore the name of the Company in the Register of Companies maintained by him.
2. The Company was incorporated on 18.05.2004, bearing CIN: U28939MH2004PLC146375 as a public company limited by shares having its registered office at 401, VIP Plaza, off. Andheri-Malad Link Road, Andheri (West) Mumbai, Maharashtra 400053.
3. The authorized share capital of the Company is Rs. 400,00,000, divided into 40,00,000/- number of equity shares of Rs. 10/- and the issued, subscribed, and paid up capital of the Company is Rs. 2,83,25,800 divided into 28,32,580 number of equity shares of Rs. 10/.
4. The main objects of the Company is as follows:
 - to carry on the business of manufacturers, producers, importers, dealers, stockiest, merchandisers, agents, traders, hirers and repairers of all types of tools, dyes, accessories and other engineering items required by various industries, particularly the ceramic industry.

A copy of the certificate of Incorporation and Memorandum of

Association and Articles of Associations are filed along with the Application.

5. The Applicant stated that the Respondent issued Form No. STK-5 vide public notice no. RoC/STK-1/32 dated 19.07.2018 pursuant to section 248(1) and (4) of the Companies Act, 2013 and Rule 7 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 to several Companies including the Company herein stating that the Company had not been carrying on any business or operation for a period of two immediate preceding financial years and has not made any Application within such period for obtaining the status of dormant Company under Section 455 of the Companies Act, 2013. It was further mentioned that the Respondent by the said notice proposed to remove/strike off the name of the Company from the Register of Companies and dissolve them unless a cause was shown to the contrary within thirty days from the date of the said notice.
6. Thereafter, the Respondent issued Form no. STK-7 and struck off the Company's name from the Register of Companies maintained by it vide No. RoC-MUM/Section 248/2nd Drive/STK-7/7254, notice of Striking off and Dissolution dated 12.09.2018 pursuant to Section 248(5) of the Companies Act, 2013 and Rule 9 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016. The Applicant submitted that the Company was struck off by the Respondent due to the default in filing statutory returns. The Applicant further submitted that the Company had been active since its incorporation and has maintained all the statutory registers and records as prescribed under the Companies Act, 1956/2013. The Company was compliant with various statutory provisions and has

never defaulted in payment of statutory dues, payment to its creditors and employees. The Company was also regular in filing income tax returns.

7. The Applicant further submitted that the Company remained active in carrying out the business, owned assets, and remained functional at all times. The Company had also held and convened its AGM regularly and the last AGM was held on 30.10.2017. The Applicant further stated that the balance sheet and P and L accounts as on 31.03.2017 had also been duly audited by the chartered accountant.
8. Along with the Application, the Applicant has submitted the following:
 - (a) Balance sheet as of 31.03.2016.
 - (b) Balance sheet as of 31.03.2017.
 - (c) Balance sheet as of 31.03.2018.

Further, through an Additional Affidavit dated 20.02.2024, the Applicant has submitted the following documents: -

- Minutes of Meeting of latest AGM as of 30.09.2017
- Balance sheet as on 31st March, 2017
- Balance sheet for F.Y 2020-2021
- Income tax Returns for the A.Y 2020-2021
- Balance sheet as of F.Y 31.03.2023.

9. The Applicant further submitted that the Company has all the documents ready and is willing to submit the same before the Respondent.
10. Upon notice, the Respondent/RoC has filed his report wherein it is seen that the Respondent had followed all the procedural compliances for striking off the Company from the Register of Companies. The respondent further submitted that the disqualification of directors under section 164(2)(a) of the Companies Act, 2013 cannot be removed in this Petition.
11. We have considered the plea of the Application and the Respondent/RoC as well. It is observed that the name of the Company was struck off on 12.09.2018 and the present Application is filed under Section 252 of the Companies Act, 2013 on 18.01.2023, i.e., after 4 years. Though the Application has been filed under Section 252 of the Companies Act, 2013 the Applicant has not specified whether it is filed under Section 252(1) or Section 252(3) of the Companies Act, 2013. The Appeal under Section 252(1) is required to be filed within a period of 3 years from the date of the order of the Registrar striking off the name of the Company whereas an Application under Section 252(3) can be filed before the expiry of 20 years from the publication of notice under section 248(5) of the Companies Act, 2013. Since the Application is filed after 3 years from the date of striking off, presumably, the Application is to be considered under Section 252(3) of the Companies Act, 2013. As per Section 252(3) of the Companies Act, 2013, the Applicant has to satisfy 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.

12. The Applicant has submitted unsigned and unaudited financial statements to show that the Company had been in operation from its incorporation. The unsigned annual account of the Company as on 31.03.2017 shows reserves and surpluses to the tune of Rs. 1,785,924/- and business advance is shown as Rs. 27,000,000/- cash and cash equivalent is shown as Rs. 3,190,099/- Further, unsigned annual account of the Company as on 31.03.2023 shows reserves and surpluses to the tune of Rs. 16,27,164/- and business advance is shown as Rs. 2,79,87,883/- cash and cash equivalent is shown as Rs. 31,89,864/-. The last AGM appears to be held on 30.10.2017 and the Company had been regular in filing tax returns with the Income Tax Authorities. The Applicant has submitted acknowledgment of returns filed for the Assessment year 2023-24 also. Thus, taking into consideration the documents provided and the submissions made, and the provisions of Section 252(3) of the Companies Act, 2013, we are of the opinion that there are just and proper reasons to restore the name of the Company in the Register of Companies from the struck off date. In view of the same, the order passed by the Respondent/RoC in striking off the name of the Company is hereby set aside, subject to the following directions:

- I. The Registrar of Companies, Mumbai is ordered to restore the original status of the Petitioner Company (MECA-BETHARIA Engineering Limited) as if the name of the Company has not been struck off from the Register of Companies with resultant and consequential action 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 Petitioner Company’s name in the Register being maintained by the RoC, annual returns and balance sheets and all other statutory documents as are required to be made/filed 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. The restoration of the Company’s name is also subject to payment of cost of Rs. 75,000/-
- IV. This order of restoration of the name of the Company in the Register shall not automatically entitle the directors of the Company to hold directorship if disqualified under Section 164 of the Companies Act, 2013 except in accordance with law.
- V. This order allowing the petition shall not circumscribe the power of the Respondent to proceed against the petitioner Company and its directors as mandated for alleged late filing of any returns, forms, documents and such other compliance under the provisions of the Companies Act, 2013.

13. The Petition stands allowed on the aforementioned

Sd/-

ANIL RAJ CHELLAN
Member (Technical)

ANKIT

Sd/-

KULDIP KUMAR KAREER
Member (Judicial)