

**NATIONAL COMPANY LAW TRIBUNAL  
GUWAHATI BENCH  
GUWAHATI**

**ORDER SHEET OF THE HEARING ON 23<sup>rd</sup> MARCH, 2024, 10:30 A.M.**

**CP /12/GB/2023**

**Present: 1. Hon'ble Member (Judicial), Shri H.V. Subba Rao  
2. Hon'ble Member (Technical), Shri Satya Ranjan Prasad**

Name of the Company	Yumiko Global Infra Tech Pvt. Ltd. Vs Registrar of Companies, NER
Under Section	U/s 252 (3) of Companies Act, 2013

For Petitioner (s) :

For Respondent (s) :

**ORDER**

Order pronounced in the open court *vide* separate sheets.

Sd/-

**Satya Ranjan Prasad  
Member (Technical)**

Sd/-

**H.V. Subba Rao  
Member (Judicial)**

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**CP No. 12/GB/2023**

***In the matter of:***

An Application under Section 252 (3) of the Companies Act, 2013; An application seeking restoration of the name of the company on the Register of Companies maintained by the Registrar of Companies, NE Region, Guwahati;

-And-

***In the matter of:***

**Yumiko Global Infra Tech Private Limited**, CIN No. U74999AR2016PTC013431, registered office at Legi Complex, Naharlagun-791110, Itanagar, Arunachal Pradesh, represented through Mrs. Lishi Yapu;

**... Struck Off Company/Petitioner**

-Versus-

**The Registrar of Companies**, Guwahati, NER having his office at 1<sup>st</sup> Floor, BSNL Bhawan Building, Ananda Ram Baruah Road, Pan Bazaar, Guwahati, Assam- 781001.

**... Respondent**

***Coram:***

Shri H.V Subba Rao : Member (Judicial)

Shri Satya Ranjan Prasad : Member (Technical)

**Appearances (through video conferencing)**

For the Applicants : Mr. K.M. Mahanta, Adv.

For the Respondent : Mr. Pfofokri, STA, ROC

**Order reserved on: 08.04.2024  
Order pronounced on: 23.04.2024**

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**O R D E R**

1. This Company Petition has been filed by Mrs. Lishi Yapu in the capacity of Director- cum- Shareholder, having 100 shares of **Yumiko Global Infra Tech Private Limited** (CIN No. U74999AR2016PTC013431) under Sec. 252(3) of the Companies Act, 2013 (“Act”) for restoration of name of the struck off company in the register of companies, maintained in the office of the Registrar of Companies, NER. The Company was incorporated on 16.06.2016. It is stated that the name of the Company got struck off on 17.02.2022, pursuant to Section 248(5) of the Companies Act, 2013 since, there was failure to file Financial Statements and Annual Returns 2019 onwards.
2. It is noted that the authorized share capital of the Company is Rs. 20,00,000 (Rupees Twenty Lakh Only) and Paid-Up Capital of the Company is Rs. 1,00,000 (Rupees One Lakh Only). There were two Directors in the Company:

<b>Sl. No.</b>	<b>Name</b>	<b>DIN</b>	<b>Designation</b>
1.	Lishi Yamin	05253267	Director
2.	Lishi Yapu	08990327	Director

3. The Petitioner submits that the Respondent did not follow the procedure so prescribed under Section 248(1) of the Companies Act, 2013 were neither sent nor received and *suo moto* proceeded to issue notice under Section 248(5) publishing the name of the Petitioner Company in the Official Gazette.
4. That the Petitioner Company has been active since incorporation and has also been maintaining all the requisite documentation, as per the provisions of the Companies Act, 2013. The Applicant Company has not received any show cause notice, nor was it afforded any opportunity of being heard before the aforesaid action was taken by the Respondent arbitrarily.
5. The accounts of the Petitioner Company were prepared and audited and that the Company had engaged the services of a Company Secretary to perform the task of filing the returns with the office of the Registrar of Companies but due to the pandemic and change of Director in the meantime, the Financial Statements and Annual Returns could not be submitted, which was also neither revealed/pointed

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out to the new Director of the Applicant company by the Company Secretary so appointed.

6. Meanwhile, the Company slowly started to recover from the pandemic and were informed by the parties that some bills of tender has been cleared lately. Knowing that Director and one of its representatives went to the bank at Naharlagun, Itanagar to verify the amount so credited and also to clear the long pending bills of the labors etc. It is then, that they came to know from the Bank Manager that their company account was freezed and no transactions whatsoever could be made. Further, it was only in November 2021, when the fact of non-filing of the returns and other documents with the Respondent, as well as the fact that the Petitioner Company's name had been stuck off in the Register maintained by the Respondent, was known to the Applicant Company.
7. The Petitioner Company approached Registrar of Companies by submitting an application on 07.02.2023 wherein, they were orally informed that the said action of striking off the name of the company was taken *suo moto* and suggested to take legal help as they did not have the authority to revive the Applicant Company.
8. The Petitioner submits that they are ready and willing to file all outstanding statutory documents *i.e.*, financial statements and annual returns for the Financial Year since 2019 onwards along with the filing fees and additional fees, as applicable.
9. The Petitioner contends that the Company was active and operational at the time of "strike off" on 17.02.2022. To this effect, the petitioner *vide* affidavit dated 19.12.2023 submits that:
  - 9.1 To show that the company is an entity in continuous business, the Applicant herein filed audited balance sheet from the financial year 31.03.2019 till 31.03.2023. A copy of the audited balance sheets have been annexed.
  - 9.2 The Petitioner Company is having PAN –AAACY8122G and has also filed the Annual Tax Statement under Section 203 AA of the Income Tax Act, 1961 from FY 2018-19 to 2022-23. Copy of the Annual Tax Statements for FY 2018-19 till 2022-2023 have been annexed.

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10. Shorn of unnecessary details, observations made in the report of ROC, NER dated 19.12.2023 are produced hereunder:
- 10.1 *The competent authority has struck off the name of the petitioner Company pursuant to Sub-section (5) of Section 248 of the Companies Act, 2013 since he had reasonable cause to believe that M/s Yumiko Global Infra Tech Private Private Limited is not carrying on any business or operation for a period of two immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant company under Section 455.*
- 10.2 *It is evident from the MCA records that the Company has not its Annual Returns and Financial Statements from 2019 onwards.*
- 10.3 *ROC, NER issued notice in Form STK-1 on 06.12.2021. Further, notice in Form in STK-5 issued on 10.01.2022 and finally STK-7 was issued by the ROC on 17.02.2022.*
- 10.4 *That in this regard it is submitted that presently the status of the company is 'struck off' company can be allowed to be revived under section 252 of the Companies Act, 2013 on its own merits directing petitioner to file all the pending statutory returns with the additional fees as applicable within 30 days from the date of passing of the order, failing which the respondent shall take action to strike off the name of the company again without giving any further notice to the petitioner. The Company and its directors are liable for action with regard to delay on filing of statutory returns and declaration for commencement of business.*
11. This matter was earlier reserved for Order on 10.01.2024. However, owing to certain discrepancies found in the pleadings of the Petitioner, the matter was again listed on Board for clarification on 24.01.2024. Further, in view of the clarifications sought by this Tribunal with respect to the shareholding of Mrs. Lishi Yapu, Ld. Counsel for the Petitioner on 08.04.2024 submitted share certificate as well as confessed that the names of two Directors also appears in the register of members while also submitting a copy of Hon'ble NCLAT order *M/s AVS Enterprises Pvt. Ltd. v. ROC, Delhi and Anr [Company Appeal (AT) No. 47 of 2021]*.
12. Heard the Ld. Counsel appearing for the Petitioner. Material on record perused. It is noted that ROC, Guwahati, NER has not objected to this application for

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restoration of the name of the company subject to filing of all the pending statutory returns along with additional fees as applicable.

13. In *G.S.C. Industries Pvt. Ltd. Delhi & Anr v. ROC, NCLT of Delhi and Haryana, New Delhi [Company Appeal (AT) No. 84 of 2018]*, Hon'ble NCLAT in paragraph 18 observed that,

*“ 18. What is material to be shown by Appellant is that at the time of striking off the Company was carrying business or was in operation. For this purpose, the documents subsequent to the date of striking off the name of the Company would not be material for consideration of the first two aspects as mentioned above although those documents may be relevant for considering the question whether it would be just that the name of the Company should be restored.”*

We are sufficiently convinced that the share certificate submitted by the Appellant may be considered as proof of shareholding of Mrs. Lishi Yapu with 100 shares, providing her *locus standi* to file this Application.

14. Further, it is noted that the Company was Struck Off on 17.02.2022. It is apparent from the relevant Balance Sheet that the Company has liabilities to the tune of Rs. 14.5 Crore (approx.). It has fixed assets worth Rs. 45.42 lakh. During the year it has generated revenue from operations amounting to Rs. 56.31 lakh. It has also incurred expenses towards employee benefit, which *prima facie* indicate that it had people in employment when the Company was Struck Off. We also note that the company has a valid PAN (AAACY8122G) and also submitted the Annual Tax Statement under Section 203 AA of the Income Tax Act, 1961 from FY 2018-19 to 2022-23. Above details *prima facie*, suggest that the Petitioner Company was continuing with its business activities on the date on which it was struck off. Therefore, in the view of justice, equity and also keeping in view the interests of all the stakeholders, this Tribunal finds that the aforementioned reasons are sufficient to order the restoration of the struck off Company. In light of the above-mentioned observations, we consider it just and proper to revive the name of the Company on

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the Register of Companies as maintained by the RoC, NER. We are therefore satisfied that the name of the company should be restored to the register.

15. Accordingly, the present Petition is ALLOWED on the following terms:
- i. The Registrar of Companies, Guwahati, NER, the Respondent herein, is directed to restore the original status of the company as if the name of the Company had not been struck off from the register of Companies with the resultant and consequential actions like changing status of Company from 'struck off' to 'Active';
  - ii. The Company is directed to file all pending statutory returns including Balance Sheets, Annual Returns with prescribed fees/additional fee/fine as decided by Registrar of Companies, Guwahati, NER within 30 days from the date on which its name is restored on the register of companies maintained by the Registrar of Companies, Guwahati, NER;
  - iii. The restoration of the Company's name is also subject to the payment of cost of Rs. 60,000/- (Rupees Sixty 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 restoration of company pursuant to orders of NCLT in C.P. No. 12/GB/2023";
  - iv. The Petitioner is directed to deliver a certified copy of this order with Registrar of Companies, Guwahati, NER within thirty days of the receipt of this order;
  - v. On such delivery and after due compliance with the above directions, the Registrar of Companies, Guwahati, NER is directed to publish the order in the Official Gazette under his office name and seal;
  - vi. This Order is confined to the violations, which ultimately led to the impugned action of striking off the name of the Company, and it will not come in the way of Registrar of Companies, to take appropriate action(s) in accordance with law, for any other violations / offences, if any, committed by the petitioner company prior to or during the period the name of the Company remained struck off.

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16. The CP No. 12/GB/2023 is disposed of accordingly.
17. The Registry is directed to send e-mail copies of the order forthwith to all the parties inclusive of the Counsels.
18. Urgent certified copy of this order, if applied for, be issued upon compliance with all requisite formalities.
19. File be consigned to records.

Sd/-  
**Satya Ranjan Prasad**  
**Member (Technical)**

Sd/-  
**H.V. Subba Rao**  
**Member (Judicial)**

*Signed this on 23<sup>rd</sup> day of April, 2024.*