

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

ORDER SHEET OF THE HEARING ON 13th MAY, 2024, 10:30 A.M.

CA /1/GB/2023

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

IN THE MATTER OF	Nitish Chandra Roy Vs The Registrar of Companies, NER
UNDER SECTION	U/s 252 of Companies Act, 2013

For Petitioner (s) :

For Respondent (s) :

ORDER

Order pronounced in the open court *vide* separate order, in the result the above CA /1/GB/2023 is **allowed**.

Detailed order follows.

Sd/-

Satya Ranjan Prasad
Member (Technical)

Sd/-

H.V. Subba Rao
Member (Judicial)

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In the matter of:

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

-And-

In the matter of:

Narayane Smart Services (OPC) Private Limited, CIN No. U72900AS2021OPC020928, registered office at C/o near Chilarai College Kheskshiali, PO – Golakganj Dhubri AS – 783334, India, represented through Mr. Nitish Chandra Roy;

... Struck off/ Appellant

-Versus-

The Registrar of Companies, HVFM+4JC, Near High Court, behind Indian Overseas Bank branch, Shillong, Meghalaya;

... Respondent No. 1

Department of Income Tax, Aayakar Bhawan, Christian Basti, Guwahati – 781005, Assam.

... Respondent No. 2

Coram:

Shri H.V Subba Rao : Member (Judicial)

Shri Satya Ranjan Prasad : Member (Technical)

Appearances (through video conferencing)

For the Applicants : Mr. R. Sharma, Adv.

For the Respondent : Mr. Pfofri, STA, ROC

**Order reserved on: 19.04.2024
Order pronounced on: 13.05.2024**

ORDER

1. This Company Appeal has been filed by Nitish Chandra Roy in the capacity of Shareholder, having 10,000 equity shares, of **Narayane Smart Services (OPC) Private Limited** (CIN: U72900AS2021OPC020928) under Section 252(3) of the Companies Act, 2013 for restoration of the name of struck off Company in the Register of Companies, maintained in the office of the Registrar of Companies, NER. The Company was incorporated on 25.01.2021. It is stated that the name of the Company was struck off on 24.11.2022, pursuant to Section 248(1)(d) of the Companies Act, 2013, since, there was failure to file declaration within a period of 180 (One Hundred and Eighty) days from the date incorporation of company.
2. As per the Memorandum of Association of the company, the company was incorporated for doing business of development and designing of web based software's, repair and maintenance services for computers, Network Management and Networking Solutions, Development of IT Infrastructure etc. The authorized share capital of the Company is Rs. 1,00,000/- (Rupees One Lakh Only) and the Paid-Up Share Capital of the Company is Rs. 1,00,000/- (Rupees One Lakh Only). The authorized share capital has been fully paid through cash by the only Shareholder of the Company being the present Appellant.
3. The Appellant submits that Company had duly complied with all the requirements of Section 10 and paid the subscription amount except for the filing of Form INC-20A and the same was not filed on account of the inadvertence and deficient professional advice/guidance to the Appellant.
4. The Appellant submits at the time of incorporation of the Appellant Company, there was a nationwide lockdown declared in four phases from 2020 to 2021 which dented the entire business community especially in the field of Information Technology wherein the Global supply/service chain has been badly affected and when the situation begun to ride on a good note from July 2021 onwards, the Appellant Company started its business operations as reflected from the Bank Account statement of the Appellant Company for the period from 08.10.2021 to 08.02.2023

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of the ICICI Bank Limited, Branch CMS and the Financial Statement prepared for the period ending 31.10.2022 just before striking off of the Company.

5. The Registrar of Companies (RoC) struck off the name of the Company under 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 and a Notice of Strike off in Form No. STK-7 was published on 24.11.2022 for non-filing of declaration under Section 10A (1) of the Companies Act, 2013, despite paying the subscription amount. The Appellant submits that since it is a One Person Company, having no other director or shareholder or professional, it was not properly guided. Hence, it failed to file the Declaration within a period of 180 days from the date of incorporation in pursuance of Section 2 (41) of the Companies Act, 2013.
6. The Appellant further submits that the first financial year of the Company was supposed to end on 31.03.2022 and therefore the Company was to hold its first Annual General Meeting (AGM) as per Section 96 of the Companies Act, 2013, within 9 months from the end of the financial year. Accordingly, the Company was to hold its first financial year by the end of 31.12.2022 and finalize the Financial Statement ending 31.03.2022. The intent of Section 10A (3) of the Companies Act, 2013 is that the Registrar can only initiate the Striking off process if it has a reasonable cause to believe that the company is not carrying any business or operations. The striking off process could have been initiated only after the due date of holding the AGM or last date of approval of Financial Statement. In the instant case, the ROC before the due date of filing the Financial Statements for the Financial Year ending 31.03.2022, had taken the premature action of striking off of the Company which is not tenable in the eyes of the law and the said action must liable be quashed and set aside on this count alone.
7. The Appellant relied on *Ascot Shoes Private Limited v. Registrar of Companies, (2017) 2 CompLJ118(Del)*, wherein the Hon'ble High Court of Delhi in paragraph 12 observed that,

“12.....Looking to the fact that that Petitioner is stated to be a running company; and that it has filed this petition within the stipulated limitation period,

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and to the decision of the Bombay High Court in Purushottamdass and Anr. (BulakidasMohta Co. P. Ltd.) v. Registrar of Companies, Maharashtra & Ors. (supra); it is only proper that the impugned Company Appeal (AT) No. 171 of 2020 order of the respondent dated 23.06.2007 which struck off the name of the petitioner from the Registrar of Companies, be set aside.

8. Shorn of unnecessary details, observations made in the report of ROC, NER dated 11.09.2023 are produced hereunder:
- a. *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 in the matter of M/s Narayanee Smart Services (OPC) Private Limited (hereinafter referred to as the "Company"), subscriber to the memorandum has not paid the subscription which they had undertaken to pay at the time of incorporation of a company and a declaration to this effect has not been filed within one hundred and eighty days of its incorporation under sub section (1) of section 10A of the Companies Act, 2013 with the Registrar of Companies, Guwahati.*
 - b. *It is evident from the MCA records that the Company has not filed e-form INC-20A-Declaration for commencement of business with the office of the respondent till date.*
 - c. *Further, the company has not filed its Balance sheet and Annual Return for the financial year 2021-22 with the Office of the Respondent.*
 - d. *The ROC, NER issued notices in Form STK-1 dated 29.06.2022. Further, notice in STK-5 dated 02.09.2022 published in two (2) newspaper (English & Assamese) on 06.09.2022 and also in the Official Gazette on 10.09.2022. Further, a notice in STK-7 was issued w.e.f 24.11.2022. The petitioner company's name is appearing at Sl. No. 550 of the Registrar of Companies notice (STK-7) dated 18.10.2022 and the same was published in the Official Gazette.*
 - e. *That in this regard it is submitted that presently the status of the company is 'struck off' and the 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 and e-form INC-20A-Declaration for commencement of business 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*

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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.

9. The Petitioner contends that the Company was active and operational at the time of “strike off” on 24.11.2022. To this effect, the petitioner *vide* affidavit dated 06.01.2024 submits that:
 - a. To show that the company is an entity in continuous business, the Appellant herein enclosed a copy of the property paper, bank Account statement for the period from 08.10.2021 till 08.02.2023 and a Financial Statement for the stub period ending 31.10.2022 and copy of the Invoices against incurring the expenses in relation to the business of the Appellant Company.
 - b. The Appellant has made specific declaration in the Incorporation E-form SPICE that the registered office is capable of receiving and acknowledging all communications addressed to the Appellant Company shall be maintained at the given address. The functioning of the registered office for business purposes of the Appellant Company has been verified by the Chartered Accountant, Mr. Amit Agarwal, who personally visited the premises of the Appellant Company’s registered office.
 - c. The nature of the business of the Company relates to the development and designing of web based softwares of computer and also engaged in Network Management and Networking solutions which do not as such require any tangible fixed assets apart from the operating system, software and domain. Unlike the manufacturing industry, an IT service industry requires softwares as the main intangible fixed asset. Appellant herein enclosed copy of the Invoices for the purchase of softwares by the Appellant Company.

9. Heard the Ld. Counsel appearing for the Petitioner. Material on record perused. It is noted that RoC, NER has not objected to this application for restoration of the name of the company subject to filing of all the pending statutory returns and E-form- INC-20A- Declaration for Commencement of business with additional fees as applicable. As per the submissions of the Appellant, the Company is functioning and in

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operation and to that effect, the Appellant had enclosed a copy of the property paper, bank Account statement for the period from 08.10.2021 till 08.02.2023, Financial Statement for the stub period ending 31.10.2022 and copy of the Invoices against incurring the expenses in relation to the business of the Appellant Company.

10. We also note from the balance sheet of the Company for the Financial Year ended on March 31, 2022 and other documents submitted with the petition that apart from reserve and surplus the Company has Fixed Assets. Also, it has some current liabilities. Further, the Company has made certain salary payments which *prima facie* suggest that it had people in its employment when the Company was Struck Off.
11. In the light of the above-mentioned observations, we consider it just and proper to revive the name of the Company on 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.
12. Accordingly, the present Appeal is ALLOWED on the following terms:
 - i. The Registrar of Companies, Guwahati, NER, 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 under miscellaneous fee by mentioning particulars as "*Payment of cost for restoration of company pursuant to orders of NCLT in C.A. No. 1/GB/2023*";
 - iv. The Appellant 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;

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- 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.
14. The CA No. 1/GB/2023 is disposed of accordingly.
15. The Registry is directed to send e-mail copies of the order forthwith to all the parties inclusive of the Counsels.
16. Urgent certified copy of this order, if applied for, be issued upon compliance with all requisite formalities.
17. File be consigned to records.

Sd/-
Satya Ranjan Prasad
Member (Technical)

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

Signed this on 13th day of May, 2024.