

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

ORDER SHEET OF THE HEARING ON 3rd MAY, 2024, 03:00 P.M.

CP/18/GB/2023

**Present: 1. Hon'ble Member (Judicial), Smt. Bidisha Banerjee
2. Hon'ble Member (Technical), Shri D. Arvind**

In the Matter of	Jamini Kalita Vs M/s. Sadhana healthcare & Hospitality Pvt. Ltd. 2. The Registrar of Companies, NER, 3. Arup Kumar Nath, 4. Sandhyamika Devi
Under Section	U/s 252(3) of Companies Act, 2013

For Petitioner (s) : Mr. G. Khandelia, Adv. & Mr. C. S. Sharma, CS.

For Respondent (s) : Mr. Pfofri, STA ROC, NER
Ms. P. Agarwala R-3 & R-4

ORDER

Ld. Counsel for the Applicant, Mr. G. Khandelia is present alongwith Ld. Aauthorised Representative Mr. C.S. Sharma. Mr. Pfofri, STA appears on behalf of ROC, NER. Mr. P. Agarwala present for R3 and R4.

Heard the Ld. Counsel appearing for the Petitioner and perused the report filed by the ROC. The above Application is allowed subject to payment of costs of Rs. 10,000/- per defaulted year. Detailed order follows hereunder:

1. This present Petition has been filed under Section 252(1) of the Companies Act, 2013 (hereinafter as Act) by the Ms. Jamini Kalita shareholder of M/s. Sadhana Healthcare & Hospitality Pvt. Ltd. (CIN: U85110AS2016PTC012359) with its Registered Office at House no. 4D, Pan Residency, Satgaon, Guwahati, Kamrup-781037, praying for restoring its name in the Register of Companies maintained by the Registrar of Companies, NER (hereinafter as ROC).

2. The name of the company was struck off from the Register pursuant to an STK-2 e-form filed by the company under Section 248(2) of the Companies Act, 2013.
3. The ROC has published a public notice for Striking off and Dissolution of Company *i.e.* STK - 7 dated 17.09.2020.

Submissions from the Petitioners:

4. The Petitioner submits that the Company was incorporated on 26.02.2016 under the Companies Act, 1956 with authorised share capital of the company as Rs. 3,00,00,000/- divided into 30,00,000 Equity shares of Rs. 10/- each and the issued, subscribed and paid up capital of the company as Rs. 4,00,000/- only divided into 40,000 equity shares of Rs. 10/- each as on 31.03.2022.
5. The company has two Directors namely, Mr. Arup Kumar Nath with DIN- 07437989 and Ms. Sandhyamika Devi with DIN- 07442207. The Application herein for restoration is filed with ROC by one of its shareholders *i.e.*, Ms. Jamini Kalita.
6. The Respondent *i.e.* Registrar of Companies, Shillong has initiated proceedings under section 248 of the Companies Act, 2013 on the ground of filing of application by the directors in the Form No. STK 2 *vide* their members meeting dated 25.09.2019 due to non-operation of the company since incorporation without the consent of all the shareholders of the Company.
7. The Petitioner had invested in the Equity share capital of the company and holding 25.00% shares of the company as on 31.03.2022 and the Company is struck off without the Petitioner's consent. The petitioner further submits that the company is having Two Plot of Lands at Amerigog NK, Panbari duly registered in the name of the company which is also inadvertently not included in the balance sheet of the company. If the Company is struck off from the Registrar of Companies, his & other stakeholder's interest in the company will be adversely affected. Two Sale Deeds annexed.
8. The assets of the company includes Two plot of lands duly registered in the name of the Company having the registered value of Rs. 48,15,100.00 (Rs. Fourty Eight Lakhs Fifteen Thousand One Hundred only) which were inadvertently not included in the audited balance sheet filed with the Registrar of Companies.

9. The company is having Assets of Rs. 48,15,100/- (Rs. Forty-Eight Lakhs Fifteen Thousand One Hundred only) and Net Worth of Rs. 4,00,000/- (Rs. Four Lakhs only) as on 31.03.2022.
10. The financial statements and annual returns of the company has been filed up to the financial year 2018-2019 on the MCA portal as per MCA Records. The financial statements returns of the company has been filed up to the financial year 2021-2022 on the Income Tax India e-filing portal.
11. The Respondent No.1 Company has all through since its incorporation has been preparing the annual balance sheet and profit and loss account and the accounts of the company have been audited by a qualified Chartered Accountant.

Submissions from the Respondent/ RoC:

12. Shorn of unnecessary details, observations made in the report of ROC, NER dated 25.08.2023 are produced hereunder:

- 10.1 The competent authority has struck off the Company namely M/s Sadhana Healthcare & Hospitality Private Limited under Section 248(5) of the Companies Act, 2013, on the basis of application filed for Strike off under Section 248(2) in e-form STK-2 dated 04.10.2019 with the Registrar of Companies, Guwahati. The Statement of Accounts filed along with STK-2 and certified by CA Adarsh Agarwal (FRN No. 329056E & Membership No. 304447) discloses that the company had NIL assets and NIL liabilities.*
- 10.2 As per Section 252(1) of the Companies Act, 2013, a struck off company can only be restored only on the direction of the Tribunal within a period of 3 years from the order of the Registrar. The Tribunal be satisfied of the same.*
- 10.3 Upon receipt of e-Form STK-2, notice in Form in STK-6 was issued on 22.07.2020 inviting objections, if any, in two different newspapers (English and Assamese). Owing to the non-receipt of any objections from the stakeholders finally, STK-7 was issued by the ROC on 17.09.2020.*
- 10.4 E-form STK-2 was filed by Sandhyamika Devi, (Respondent No. 4), one of the Director and shareholder of the Company on 04.10.2019 as the Company has no assets and Liabilities as per the Special Resolution dated*

18.09.2019 along with statement of Accounts, indemnity bond, affidavit and other documents.

10.5 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.

11. 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 restoration of the name of the company subject to filing of all the pending statutory returns along with additional fees as applicable.
12. It is noted that the Company was Struck Off on 17.09.2020 and since the present Petition was filed on 06.06.2023, the Petition falls very well within the period of limitation of 3 years. On the basis of the two sale deeds under the name of the struck off company, audited balance sheet of the company as on 31.03.2022 and ITR acknowledgement for the FY 2021-22 submitted by the Petitioner, we find that the company was *prima facie*, was continuing with its business activities on the date on which it was struck off. Therefore, in the view of justice, equity and good conscience as well as keeping in view the interests of all the stakeholders involved, 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 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.
13. 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. 50,000/- (Rupees Fifty 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.P. No. 18/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.
14. The CP No. 18/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/-
D. Arvind
Member (Technical)

Sd/-
Bidisha Banerjee
Member (Judicial)