

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

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

CP/25/GB/2023

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

In the Matter of	North East Biotech Private Limited Vs Registrar of Companies, NER
Under Section	U/s 252(3) of Companies Act, 2013

For Petitioner (s) : Ms. N. Choudhary, CS

For Respondent (s) : Mr. Pfofri, STA, ROC NER

ORDER

Ld. Authorised Representative Ms. N. Choudhary is present on behalf of the Applicant. Mr. Pfofri, STA appears on behalf of ROC, NER 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 each defaulted year. Detailed order follows hereunder:

1. This present Petition has been filed under Section 252(3) of the Companies Act, 2013 (hereinafter as Act) by North East Biotech Private Limited (CIN: U93090AS2010PTC009690), a company incorporated under Companies Act, 1956, having registered office at House No.13, 1st Floor, Pranab Bhawan, opposite Guwahati Management Association, Rajgarh Road, Guwahati, Assam-781003, 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 proceedings under Section 248 of the Act. The ROC has published a public notice in form of STK-5 dated 28.12.2021 for Striking off and Dissolution of Company *i.e.* STK - 7 dated 18.02.2022.

Page – 1 of 6

Submissions from the Petitioners:

3. The Petitioner Company was incorporated on 04.02.2010 under the Companies Act, 1956 with an authorised share capital of Rs. 20,00,000/- divided into 2,00,000 number of equity shares of Rs 10/- each and the issued, subscribed and paid-up share capital of Rs, 18,10,000/- divided into 181,000 number of equity shares of Rs 10/- each.
4. The Company had two directors namely, Ms. Gitanjali Mahanta Baruah with DIN- 02900881 and Ms. Sangeeta Rani with DIN- 06400152. The Application herein for restoration is filed with ROC by one of the directors, i.e. Ms. Gitanjali Mahanta Baruah.
5. The ROC, pursuant to proceedings under Section 248 of the Act, published a public notice in form of STK-5 dated 28.12.2021 for Striking off and Dissolution of Company in form of STK - 7 dated 18.02.2022. However, it is submitted that the Respondent has not followed the procedure prescribed under Section 248(1) of the Act. Notices as required under Section 248(1) were not sent and while trying to file the Return of Balance Sheet and Annual Return with the MCA21 portal, it came to the knowledge of the Petitioner that the status of the Company was “Strike Off” and no opportunity to be heard was given to the Petitioners.
6. The reasons for striking off the company were due to defaults in statutory compliances, namely failure to file Financial Statements & Annual Returns for the period 31.03.2019, 31.03.2020, 31.03.2021, 31.03.2022 & 31.03.2023. However, the Petitioner submits that although the Balance Sheet and Annual Returns were prepared and approved by the shareholders on time but the same could not be filed on time because of COVID-19 and demise of one of the directors i.e. Ms. Sangeeta Rani(DIN: 06400152) due to medical issues and other ancillary issues not in control of the Board.

Submissions from the Respondent/ RoC:

7. Shorn of unnecessary details, observations made in the report of ROC, NER dated 10.11.2023 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 the M/s North East Biotech 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, he shall send a notice to the company and all the directors of the Company.

- b. It is evident from the MCA records that the Company has not filed Annual Return and Financial Statements from 2018 onwards. As per Section 252(3) of the Companies Act, 2013, a struck off company can be restored only on the direction of the Hon'ble NCLT within a period of twenty(20) years from the publication in the Official Gazette of the notice under subsection(5) of section 248. In this regard, it is submitted that in terms of the said provisions, the Hon'ble NCLT while passing an order for restoration, it is to be satisfied that the Company is carrying on business or in operation.*
- c. That as per the available records maintained by the office of the Registrar of Companies, Guwahati, the Company was incorporated on 04.02.2010 and the aforesaid Company was struck off on 18.02.2022 after complying with the provision of Section 248 of the Companies Act, 2013 and Rule 7 of Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016. Further, notice in STK-5 dated 28.12.2021 published in two (2) newspaper (English & Assamese) dated 31.12.2021 and also in Official Gazette on 01.01.2022.*
- d. Further, it is submitted that as per provision of Section 248(5) of the Companies Act, 2013 after the expiry of the prescribed time period and as no response has been received from the Company and the public, a notice in STK-7 dated 08.02.2022 was issued by the Registrar of Companies, Guwahati reflecting the name of the Company as strike off w.e.f 18.02.2022. The Petitioners Company's name is appearing at Sl.No. 81 of the Registrar of Companies notice (STK-7) and the same was published in the Official Gazette on 14.02.2022.*

e. *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.*

8. 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.
9. It is noted that the Company was Struck Off on 18.02.2022 and since the present Petition was filed on 09.10.2023, the Petition falls very well within the period of limitation. On the basis of Financial Statement & Annual Returns from FY-19 to FY-23 placed on record, 5 years' Business Plan for revival of the Company, Deed of Lease/Tenancy Agreement entered into by the Company for its registered address, and paid utility bill for March, 2024, submitted pursuant the Order of this Tribunal dated 27.03.2024, 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 also observe that post the demise of one of the directors, only one other remain. Therefore, in conformity with Companies Act, 2013, there is a requirement for atleast two Directors in case of a Private Limited Company and same compliance would have to be done upon restoration of the Company. We are therefore satisfied that the name of the company should be restored to the register.

10. 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. 25/GB/2023";
- iv. The sole Director is directed to ensure compliance with Companies Act, 2013 with respect to appointment of Directors and ensure appointment of atleast one more Director to meet the minimum threshold of two Directors for a Private Limited Company.
- v. 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;
- vi. 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;
- vii. This Order is confined to the violations, which ultimately led to the

viii. 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.

18. The CP No. 25/GB/2023 is **disposed of** accordingly.
19. The Registry is directed to send e-mail copies of the order forthwith to all the parties inclusive of the Counsels.
20. Urgent certified copy of this order, if applied for, be issued upon compliance with all requisite formalities.
21. File be consigned to records.

Sd/-
D. Arvind
Member (Technical)

Sd/-
Bidisha Banerjee
Member (Judicial)