NATIONAL COMPANY LAW TRIBUNAL
राष्ट्रीय कंपनी विधि अधिकरण
CUTTACK BENCH
कटक खंडपीठ

ORDER SHEET OF THE HEARING ON 11th SEPTEMBER, 2023, 10:30 A.M.

CP No. 29/CB/2023

Coram : 1. Hon'ble Member (Judicial), Shri P. Mohan Raj
2. Hon'ble Member (Technical), Shri Kaushalendra Kumar Singh

Name of the Company	Agaria Fabricated & Engg. Pvt. Ltd. -Vs- RoC-cum-OL, Chhattisgarh
Under Section	252

For Petitioner (s) Mr. Bijay Jena, Adv.

For Respondent (s) :

MENTIONED ORDER

Mr. Bijay Jena Advocate made a mention today that in the order passed by this Adjudicating Authority dated 06.09.2023 in C.P. No. 29/CB/2023, the CIN number of the applicant company is typed as U15139OR2001PTC006509 instead of U74999CT2017PTC008235, further the name of the respondent is typed as Registrar of Companies, Cuttack, Odisha instead of Registrar of Companies, Bilaspur, Chhattisgarh and made a request to amend the order. On perusal of record, it appears that the supra mistakes crept in the order inadvertently, since the mistakes are clerical/typographical in nature, the order is rectified by placing applicant company CIN No. as U74999CT2017PTC008235 and correcting wherever Registrar of Companies, Cuttack, Odisha appears as Registrar of Companies, Bilaspur, Chhattisgarh under Rule 154 of NCLT Rules, 2016. The Registry is directed to replace the previous order and upload the rectified order.

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Kaushalendra Kumar Singh
Member (Technical)

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P. Mohan Raj
Member (Judicial)

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IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH
CUTTACK

CP No. 29/CB/2023

In the matter of:

An application under Section 252(3) of the Companies Act, 2013;

-And-

In the matter of:

An application seeking restoration of the name of the company on the Register of Companies maintained by the Registrar of Companies, Bilaspur, Chhattisgarh;

-And-

In the matter of:

Agaria Fabritech and Engg. Private Limited, [CIN: U74999CT2017PTC008235], having its Registered Office at: Sukla Ha Plot, Village- Ghonghadih, Tah Takhatpur, Ganiyari, Kota Road, Post- Ganiyari, Dis- Bilaspur, Chhattisgarh

... Struck Off

-And-

In the matter of:

Amsay Bitna Ram, Director/Share Holder of Agaria Fabritech and Engg. Private Limited, residing At- Sukla Ha Plot, Village- Ghonghadih, Tah Takhatpur Ganiyari, Kota Road, Post- Ganiyari, Dist- Bilaspur, Chattisgarh;

... Petitioner

-Versus-

The Registrar of Companies Cum Official Liquidator, Chhattisgarh, Bilaspur, 1st Floor, Late Ashok Pingle Bhawan, Nehru Chowk, Bilaspur, Chhattisgarh.

... Respondent

Coram:

Shri P. Mohan Raj	:	Member (Judicial)
Shri Kaushalendra Kumar Singh	:	Member (Technical)

Appearances (through Video Conference)

For the Petitioner	:	Mr. Bijay Jena, Adv.
For the Respondent	:	-Nil-

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Order reserved on: 23.08.2023
Order pronounced on: 06.09.2023

ORDER

Per: P. Mohan Raj, Member (Judicial)

1. This Company Petition has been filed by **Amsay Bitna Ram** being one of the shareholder-cum- Director of the struck off Company namely Agaria Fabritech and Engg. Private Limited u/s. 252(3) of the Companies Act, 2013 for restoration of name of the struck off company in the Register of Companies, maintained in the office of the Registrar of Companies, Chhattisgarh. It is stated that the name of the Company was **struck off on 10 February,2022.**

2. As per the averments, Company was incorporated on 18th October, 2017 bearing **CIN NO: U74999CT2017PTC008235** as a Private Limited Company, limited by shares under the provisions of the Companies Act, 2013. The authorised share capital of the Company is Rs. 10,00,000/- (Rupees Ten Lakh only) divided into 1,00,000/- (One Lakh) number of Equity Shares of Rs. 10/- (Rupees Ten only) each. The issued, subscribed and Paid-up Equity Share capital of the Company is Rs. 10,00,00/- (Rupees Ten Lakh only) divided into 1,00,000/- (Rupees One Lakh) Equity Shares of Rs. 10/- (Rupees Ten only). There are three directors and two shareholders of the Company.

3. The main objects of the company are to carry on the business of, production, manufacture, sale, purchase, processing, refining, designers, fabricators, exporters, cold storage plants and refrigeration equipment and other apparatus for preservation of agricultural, etc. The main objects of the company are contained in Clause-III (A) of the Memorandum of Association of the Company. A copy of the Memorandum and Articles of Association is annexed as **Annexure- 2 & 3 respectively.**

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4. It is contended that the Company was incorporated on 18.10.2017, but had not filed the Financial Statements and Annual Returns and Balance sheet for the financial years ended **31.03.2018 to 31.03.2022.** The company was ignorant of the fact that the Annual Accounts are not filed with the Registrar of Companies since Balance sheets were duly prepared. As mentioned in the petition, due to the non-availability of proper professional advice and out of inadvertence, the Company was not able to file its annual documents i.e., the required Financial Statements and Annual Returns since the Financial Years ended 31st March 2018 till the present date with the Registrar of Companies, Bilaspur, Chhattisgarh the Respondent herein. Consequently, for such reasons, the name of the Company was struck off from the register of the Registrar of Companies on 10.02 2022. Further, it was submitted that once the name of the Struck off Company i.e., Agaria Fabritech and Engg. Private Limited is restored in the register of companies maintained by the ROC, Bilaspur Chhattisgarh the Struck off Company will file all the pending Financial Statements and Annual Returns with the Respondents.

5. The name of the company was struck off by the Respondent on the ground that the company was not carrying on any business or operation for a period of two years immediately preceding the financial year and has not made any application within such period for obtaining status of dormant company under section 455 of the Companies Act, 2013. It is noted that the Revenue of the company as per the audited Profit & Loss Account for the year ended 31.03.2023 is Rs. 1,77,57,164.24/- and for the period ended 31.03.2022 is Rs. 37,24,500.00/- It has also incurred some expenses in respect of employees, which *prima facie* suggest that it has people in employment and also Reserves & Surplus amounting to to Rs. 3.78.,157.38, in the financial year ending 31.03.2023. The Bank Statement up to December 2022 is annexed having credit balance as Rs. 7,69,191.59 -. Entries therein show

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that the Account is operative having credit and debit entries being made regularly.

6. In order to sustain the said plea, the appellant has placed before this Tribunal, the following evidence: -

   (i) Copy of Bank Statements;
   (ii) Copy of Certificate of Incorporation, memorandum and articles of association of the company;
   (iii) Copy of the Company Master Data;
   (iv) Copy of GST Registration Certificate.
   (v) Copy of Service Order/Work Order
   (vi) Copy of Financial Statements for the period ended 31.03.2018 to 31.03.2023.

7. Notice was issued to the Registrar of Companies, Bilaspur, Chhattisgarh. The Registrar of Companies has submitted a report. It is stated, *inter alia,* in the report that only after compliance of the requirements to be met under Section 248 of the Companies Act, 2013, Registrar of Companies, Bilaspur Chhattisgarh has struck off the name of the company from the register.

8. ROC Chhattisgarh has not objected to this application for restoration of the name of the company. On perusal of the application, we are of the view that the petition needs a sympathetic consideration. We are satisfied that the name of the company should be restored to the register. Accordingly, the present petition is allowed on the following terms: -

   a) The Registrar of Companies, Chhattisgarh, the respondent herein, is directed to restore the original status of the petitioner 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 petitioner company from **'struck off' to 'Active'.**

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b) The Petitioner Company is directed to file all pending statutory document(s) including Annual Accounts for all the periods of defaults along with prescribed fees/additional fee/fine as decided by Registrar of Companies, Bilaspur Chhattisgarh within 45 days from the date on which its name is restored on the register of companies maintained by the Registrar of Companies, Bilaspur Chhattisgarh.

c) The restoration of the Company's name is also subject to the payment of the cost of Rs. 25,000/- (Rupees Twenty-Five Thousand) 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. 29/CB/2023".***

d) The petitioner is directed to deliver a certified copy of this order to the Registrar of Companies, Bilaspur Chhattisgarh, within thirty days of the receipt of this order.

e) On such delivery and after due compliance with the above directions, the Registrar of Companies, Chhattisgarh is directed to publish the order in the Official Gazette under his office name and seal;

f) It is further clarified that 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, Bilaspur Chhattisgarh to take appropriate action(s) in accordance with law, for any other violations/offenses, if any, committed by the petitioner company prior to or during the period the name of the Company remained struck off.

9. The **C.P. No. 29/CB /2023 is Allowed** accordingly.

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10. The Registry is directed to send e-mail copies of the order forthwith to all the parties inclusive of the Counsel.

11. Urgent certified copy of this order, if applied for be issued upon compliance with all requisite formalities.

Sd

Kaushalendra Kumar Singh
Member (Technical)

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P. Mohan Raj
Member (Judicial)

Signed on this, 6th day of September, 2023.

*Supriya_P. s_*