

IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD
COURT - 2

ITEM No 301
Appeal/12(AHM)2021

Order under Section 252(3)

IN THE MATTER OF:

Hiteshkumar Jantilal Modiya
(Aditi Refractories Pvt Ltd)
V/s
Registrar of Companies, Gujarat

.....Applicant

.....Respondent

Order delivered on ..14/03/2023

Coram:

Dr. Madan B Gosavi, Hon'ble Member(J)
Ajai Das Mehrotra, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The case is fixed for pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

-Sd-

**AJAI DAS MEHROTRA
MEMBER (TECHNICAL)**

-Sd-

**DR. MADAN B GOSAVI
MEMBER (JUDICIAL)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT NO. II**

COMPANY APPEAL No. 12/AHM/2021

UNDER SECTION 252(3) OF THE COMPANIES ACT, 2013

In the Matter of:

**Mr. Hiteshkumar Jentilal Modiya
Shareholder of M/s Aditi Refractories Pvt. Ltd.**

...Appellant

Versus

**The Registrar of
Companies, Gujarat**

...Respondent

Order Pronounced On: 14/03/2023

Coram:

**DR. MADAN BHALCHANDRA GOSAVI,
HON'BLE MEMBER (JUDICIAL)
MR. AJAI DAS MEHROTRA,
HON'BLE MEMBER (TECHNICAL)**

MEMO OF PARTIES

Mr. Hiteshkumar Jentilal Modiya
Shareholder of M/s Aditi Refractories Pvt. Ltd.
R/a: 301 Rohini Tower, Antrix Residency,
Zadeswar Bharuch, Gujarat - 392001

...Appellant

Versus

Registrar of Companies, Gujarat
Office at: RoC Bhavan, Opp. Rupal Park Society,
Near Ankur Bus Stand,
Naranpura, Ahmedabad, Gujarat (380013)

...Respondent

Present:

For the Appellant : Ms. Natashah Shah, Adv.

For the RoC : Mr. Neelambhuj, Asst. RoC

For the Income Tax : Ms. Pankti Shah, for Adv. Maithili Mehta

ORDER

1. The present appeal is filed by Mr. Hiteshkumar Jentilal Modiya being the member and ex-director of the company M/s Aditi Refractories Private Limited ('Company') under Section 252 (3) of the Companies Act, 2013 ('the Act') against the order of striking off the name of the company passed by the Registrar of Companies, Ahmedabad under Section 248 of the Act read with Rule 7 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 vide notice in Form No. STK-7 dated 14.08.2018 published by Registrar of Companies, the Respondent herein.

2. The Company is incorporated as a Private Limited Company with the Registrar of Companies, Ahmedabad on 28.05.2013 under the provisions of the Companies Act, 1956 with CIN U29633GJ2013PTC075300 under the name and style of “M/s Aditi Refractories Private Limited” and the registered office of the Company is at 301, Rohini Tower, Antrix Residency, Zadeswar Bharuch, Gujarat - 392001.
3. The Authorized Share Capital of the company is Rs. 1,00,000/- (Rupees One Lakh Only) divided into 10,000 (Ten Thousand) equity shares of Rs.10/- (Rupees Ten Only) each. The issued, subscribed, and paid-up share capital of the Company is Rs. 1,00,000/- (Rupees One Lakh Only) divided into 10,000 (Ten Thousand) equity shares of Rs.10/- (Rupees Ten Only) each.
4. The main objects of the company as per Memorandum of Association of Company is to carry on the business as manufacturers, manufacturer's representatives, traders, dealers, agents, stockist, consignors, consignees, factors, exporters, importers and distributors of all classes, kinds, types, nature and description of tiles, whether acid proof, fire proof, ceramic, granite, floor tiles, roofing, ceramic wares, glass, glass wares, insulators, asphalt, asbestos, asbestos products, fire bricks, fire clay fire cement, cement products, wall tiles, refractory tiles, paving tiles, grey tiles, sanitary wares, crockery, pottery, earthen wares, glass frit, ceramic glaze mixer, ceramic glass frit, saggar, grinding media all other ceramic products and bye-products thereof and calcination of ball clay, white clay, soap stone powder, calcite powder, wollastonite powder, feldspar, clastar-3, dolomite, china clay

and speciality bricks and or raw materials used in products like rubber, pvc, pharmaceuticals and various ceramic products.

5. Due to non-compliance of provision of the Companies Act, 2013 in respect to filing of Annual Returns and Financial Statements for the period from 2013-14 to 2019-20, the name of the company was struck off in terms of provision of Section 248(4) of the Companies Act, 2013 read with Rule 7 and Rule 9 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016.
6. The Appellant submits that the Company was doing its operational activities since its inception but due to inadvertence and lack of professional guidance, the Company failed to file its financial statements and annual returns.
7. The Appellant has brought forward the following facts of its being in operation: -
 - (i) Copies of Audited Financial Statements for Financial years 2013-2014 to 2019-20. The Balance Sheet as on 31.03.2020 reflects trade payables of Rs. 2,20,800/-, and cash and cash equivalent of Rs 5,31,192/-, and also land of value of Rs. 14,13,000.
 - (ii) Copies of Bank Statements from HDFC Bank for the period from 01.04.2019 to 16.03.2021 reflecting closing balance as on 02.01.2020 of Rs. 5,18,892/- and various transactions.
 - (iii) Copy of Income Tax returns for the Assessment Year 2020-21. The tax paid for Assessment Year 2020-21 is NIL.
 - (iv) Copy of Deed of Assignment executed between Steel Craft and the Company whereby Steel Craft agreed to transfer interest of

possession in the plot No. 828 to 831 situated in village Palej Taluka Bharuch, to the Company and supplementary agreement.

8. The Registrar of Companies had filed its reply and submits that due to non-filing of statutory returns since incorporation, the name of the company was struck off. It is also stated that the instant Appeal should have been filed under Section 252(1). It is further submitted that if the order of restoration is passed, exemplary costs be imposed on the Company and the Company and its directors be directed to furnish detail inventory of all movable and immovable assets of the company and its directors/related party along with the copy of title documents and valuation report and the latest KYC verification report and succession certificate (if applicable) before this Hon'ble NCLT and the copy of the same also be submitted to this Respondent office of the Registrar of Companies. Also, the Company be directed to file all the pending statutory returns/compliances electronically as provided under various provisions of the Companies Act, 1956, Companies Act, 2013 and also direct the Company and its directors to make application under Section 441 /454 of the Companies Act, 2013 for compounding / Adjudication of the offences committed, in the interest of justice.
9. It is found on e-portal that the Income Tax Department had filed a letter dated 21.12.2021 and stated that there is no demand outstanding against the Company.
10. Heard the submissions made and perused the documents filed. It is noted that the Appellant being the member of the company is eligible to file the Appeal under Section 252(3). The grounds contemplated under Section 252 of the Companies Act, 2013, namely, that at the time of its name being struck off, the Company was carrying on

business or in operation or otherwise it is just that the name of the company be restored to the register of companies and Section 252(3) also contemplates that any of the above conditions are required to be satisfied before exercising jurisdiction to restore company to its original name on the register of the Registrar of Companies.

11. The Appellant have submitted sufficient evidence of the Company in operation and doing business during the period prior to strike off as required under provisions of the Companies Act, 2013 and in addition has also submitted record of possessing immovable property by the Company. Considering above and provisions of Section 252(3) of the Companies Act, 2013 which vests this Tribunal with a discretion where the Company whose name has been struck off and it is just to do so can restore the name of the Company in the Register and in the interest of all stakeholders including the Appellants who as a member seeks restoration of the name of the Company in the register maintained by Registrar of Companies, the Company deserved to be restored.
12. Accordingly, this appeal is allowed. The Public Notice of Registrar of Companies striking the name of the company is hereby set aside. The restoration of the Company's name to the Register of Registrar of Companies is ordered subject to its filing of all outstanding documents with proper filing fees along with additional fees required under law and completion of all formalities, including payment of any late fee or any other charges which are leviable by the respondent for the late filing of statutory returns, and also subject to payment of cost of Rs. 25,000/- to be paid to Prime Minister's National Relief Fund. The name of the Company shall then, as a consequence, stand restored to the Register of the Registrar of Companies, as if the name of the

Company had not been struck off in accordance with Section 248(1) of the Companies Act, 2013.

13. The appeal is allowed and disposed of accordingly.
14. Let the copy of the order be served to the parties.

-Sd-
AJAI DAS MEHROTRA,
MEMBER (TECHNICAL)

Mansi/LRA

-Sd-
DR. MADAN B. GOSAVI
MEMBER (JUDICIAL)