

IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH, COURT - II

Company Appeal No. 161/MB/2023

Under section 252 (1) of The Companies Act,
2013

In the matter of

Mr. Atul Chandrakant Jagdale

**Shareholder of ABPJ Production Private
Limited**

(CIN: U74999MH2019PTC322253)

R no. 53, Ground Floor, Mahatma Gandhi
Nagar Hutments, Raoji Ganatra Road, CGS
Colony, Sector-3, Antop Hill, Mumbai –
400037.

...Appellant

v/s

**THE REGISTRAR OF COMPANIES,
MUMBAI**

Everest, 100 Marine Drive,

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT - II

CA No. 161/MB/2023

Mumbai-400002, MAHARASHTRA,
INDIA.

.... Respondent

Order delivered: - 13.05.2024

Coram:

Anil Raj Chellan

Kuldip Kumar Kareer

Hon'ble Member (Technical)

Hon'ble Member (Judicial)

Appearances

For the Appellant

: CS Aditya Shah

For the Respondent

: Mr. Shivraj Ranjeri

ORDER

Per: Coram

- 1) The present Petition has been filed under Section 252 (1) of the Companies Act, 2013 ("Act") by **Mr. Atul Chandrakant Jagdale** for its Company **i.e. ABPJ Production Private Limited** ("the

Company”), praying for restoration of the name of the Company in the Register maintained by the Registrar of Companies, Mumbai (**ROC**).

2) The Petitioner submits that the Petitioner company has been incorporated to carry out the following objects:

- a. To carry on the business in India or outside India or elsewhere to present, produce, arrange, manage, organize, conduct, sponsor, compose, edit, plan, design, exhibit, demonstrate, promote, operate, participate, collaborate and run at national and international level all sorts of shows and modeling, films, programmes of song, music, dance, film star, pop star, T.V. channels, entertainment web-sites and for the purpose to engage, book or hire artists, authors, story writers, musicians, models, performers, and other persons and video production agencies and video tape production.*
- b) To carry on the business of production, distribution or exhibition of films and motion pictures and the running of theaters, cinemas, studios, and cinematographic shows and exhibitions, maintain and manage, Television, and or Radio centers; studios for production of serials and exports thereof.*
- c) To purchase, take on hire or otherwise acquire, film and Television and Video with the exhibiting, distributing, and renting of the same and to sell, give on hire or otherwise the films, talkies and the rights so acquired and the Company's production with their exhibiting, distributing, and renting rights.*
- d) To copyright, print, re-print, publish, manufacture, copy, distribute, exploit, vend, purchase, obtain on license or otherwise acquire, sell, offer for sale, transfer, grant, license and dispose of,*

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translate, make versions of, dramatize, arrange, adapt, transpose, transcribe, perform; represent, record, produce, reproduce, make or procure the making of any transcription or record, deal in or otherwise use music, musical compositions, numbers and works and literary and dramatic works / property and materials, pictures, photographs, sketching, drawings or the reproductions of any of them and the copyrights thereon in and every form and manner and by any and every method and means, now or hereafter known or in existence, and any and all rights and interests therein and thereto, of every nature and description anywhere in the world.

- 3) The Petitioner submits that the Company was incorporated on 07.03.2019 under the Companies Act, 2013. The Authorized Share Capital of the Company is Rs. 10,00,000 /- divided into 1,00,000 Equity Shares of Rs. 10/- each and Issued, Subscribed & Paid up Capital of the Company is Rs. 10,00,000 /- divided into 1,00,000 Rs. Equity Shares of Rs. 10/-
- 4) The List of Shareholders of ABPJ Production private limited as on 21.11.2022 is as follows –

Sr. No.	Name of Shareholder	No. of Shares (FV- Rs.10/-)	Amount
1	Mr. Atul Chandrakant Trivedi	99,000	9,90,000
2	Mr. Prakash Goverdhan Bhatt	1,000	10,000
	Total	1,00,000	10,00,000

- 5) The Petitioner herein is the shareholder cum director of the above mentioned struck-off Company. The Petitioner submitted that the Company failed to file Form INC 20A within the prescribed time. The aforesaid action was taken by Register of Companies, Mumbai as subscribers to the memorandum have 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 (I) of section 10A and has not made any application within such period for obtaining the status of a dormant Company under section 455 of Companies Act 2013.
- 6) The Petitioner submits that there is no change in Board of Directors as well as Shareholders of the Company since its incorporation. The Company was unaware of the proceedings undertaken by the ROC, Mumbai for striking off the name of the Company from its Register since the Company did not receive any such notice in this regard under section 248(1) of the Act.
- 7) The Petitioner submits that the Promoters of the Company, post-incorporation, were unaware of the compliances required by a Private Limited Company due to a lack of professional guidance. Further, due

to the demise of a family member, all business plans and projects came to a grinding halt, leading to serious difficulties. Because of these difficulties and the poor financial condition of the Company, coupled with a lack of proper guidance, the company was unable to comply with all statutory compliance filings and other requirements in a timely manner. The non-compliance of the statutory requirements of the Act by the Company was not intentional or willful. However, the Company has complied with provisions for conducting Annual General Meetings and adopting accounts on a timely basis. Furthermore, the Company recently engaged a Consultant in India to guide the Company in undertaking statutory compliances under applicable laws in India.

- 8) The Petitioner submits that the Company as on 31st March, 2022, has Revenue from Operations of Rs. 17,51,000 /-, Net Profit of Rs. 1,61,820 /- and Reserves and Surplus of Rs. 4,25,744 /-. The Company has Salary Payables of Rs. 10,00,000 /- as on 31st March 2022, due to the employees and if the name of the Company is not restored, the same would be prejudicial to the interest of the employees.
- 9) The Company has prepared its accounts since its Incorporation which have been audited every year. The Company on getting revived will file all the Financial Statements and requisite declaration within the time

stipulated by the Tribunal and also pay the required Compounding Fee /Additional Fee, in accordance with the rules.

- 10) The Petitioner submits that even though there was a default in submitting the declaration, the subscription amount has already been deposited in the Company's Bank Account. The Company hereby accepts that the non-filing of the documents was a bona fide mistake on the part of the Company without any mala fide intention and that the Company is ready to make good the default made and submit all the relevant declarations.
- 11) In support of the above, the Petitioner annexed with the Petition the Declaration by the Applicant Company for Filing all the relevant forms related to Section 10A, Annual Filings and ITR's for the respective years and audited financial statements of the Company for the year ended F.Y 2019-20, 2020-21 and 2021-22.
- 12) The Petitioner submits that the Company is in operation and is undertaking bona fide business activities. The restoration of the name of the Company will enable the Company to continue its business operations in India and continuation of employment of the existing employees. Hence, restoration of name of Company will be beneficial

to all the stakeholders and is in the public interest and will not be prejudicial to anyone or any authority.

13) As per the Respondent, the Company has not filed its statutory compliance in form INC-20A, commencement of business period of more than a year, hence the Company had been considered for being struck off by the Registrar of Companies, Mumbai, in *suo moto* action under the provision of Section 248 of the Companies Act, 2013 and also in pursuance of the circulars issued by the Ministry of Corporate Affairs, Government of India, New Delhi from time to time. The Respondent submits that after issuing STK-1 notice to the Company, a public notice in form STK-5 dated 01.10.2022 was published on the website and in a leading English newspaper (Times of India) and in vernacular language newspaper (Maharashtra Times-Marathi) on 23.09.2022, seeking objections against the proposed striking off the name of the Company from the records of RoC.

14) In absence of any representation against the proposed striking off action, the Registrar (Respondent) struck off the name of the Company on 21.11. 2022. Further, the dissolution order was published on the website of the ministry vide STK-7 on 17.12.2022.

15) We have considered the plea of the Petitioner and the Respondent /RoC. The Petitioner is seeking restoration of its name in the Register as maintained by Respondent /RoC relying on grounds that the Company was unaware of the Compliances to be undertaken by a Private Limited Company due to lack of professional guidance.

16) Upon perusal of the records placed, it is seen that the Company was struck off on 21.11.2022 by the Respondent/RoC. The documents such as the financial statements show that the Company was duly performing its business activities. Further, it is stated that the subscription amount has already been deposited in Company's bank account. Thus, taking into consideration the documents provided and the submissions made, and the provisions of Section 252(1) of the Companies Act, 2013, we are of the opinion that there are just and proper reasons to restore the name of the Company in the Register of Companies from the struck off date. In view of the same, the order passed by the Respondent/RoC in striking off the name of the Company is hereby set aside, subject to the following directions:

- I. The Registrar of Companies, Mumbai is ordered to restore the original status of the Petitioner Company (**ABPJ Production Private Limited**) as if the name of the Company has not been

struck off from the Register of Companies with resultant and consequential action like changing the status of Company from 'strike off' to 'active'.

- II. The Company shall within a period of 30 days from the restoration of the Petitioner Company's name in the Register being maintained by the RoC, file form INC 20A, annual returns and balance sheets and all other statutory documents as are required to be made/filed under the Companies Act, 2013 for the period from which there has been default with requisite charges/fees as well as additional fee/late charges.
- III. The restoration of the Company's name is also subject to payment of cost of Rs. 75,000/-
- IV. This order of restoration of the name of the Company in the Register shall not automatically entitle the directors of the Company to hold directorship if disqualified under Section 164 of the Companies Act, 2013 except in accordance with law.
- V. This order allowing the petition shall not circumscribe the power of the Respondent to proceed against the petitioner Company and its directors as mandated for alleged late filing of any returns,

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forms, documents and such other compliance under the provisions of the Companies Act, 2013.

- 17) The Petition stands allowed on the aforementioned terms.

Sd/-

ANIL RAJ CHELLAN
MEMBER (TECHNICAL)

Sd/-

KULDIP KUMAR KAREER
MEMBER (JUDICIAL)