SL. No.139

**NATIONAL COMPANY LAW TRIBUNAL**
**HYDERABAD BENCH**
**COURT HALL NO: II**

**(Video Conference)**

**CORAM: DR.VENKATA RAMAKRISHNA BADARINATH NANDULA – HON'BLE MEMBER (J)**
**CORAM: SHRI VEERA BRAHMA RAO AREKAPUDI, HON'BLE MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL, HYDERABAD BENCH, HELD ON 26.09.2022 AT 02:30 PM THROUGH VIDEO CONFERENCE**

| | |
|---|---|
| TRANSFER PETITION NO. | |
| COMPANY PETITION/APPLICATION NO. | Company Appeal/18/2022 |
| NAME OF THE COMPANY | Elite Pharmaceutical Pvt Ltd |
| NAME OF THE PETITIONER(S) | Mr. Sri Thirupathi Reddy Lakki reddy |
| NAME OF THE RESPONDENT(S) | Registrar of Companies, Telangana |
| UNDER SECTION | 252 |

## ORDER

Orders in CP 18/2022 pronounced and recorded vide separate sheets. In the result, Petition is allowed. Petitioner Company is ordered to be restored.

-Sd/-

**MEMBER (T)**

-sd/-

**MEMBER (J)**

**Syamala**

**IN THE NATIONAL COMPANY LAW TRIBUNAL**
**HYDERABAD BENCH, HYDERABAD**

C.A. No. 18/252/HDB/2022
Under Section 252(3) of the Companies Act, 2013.

In the matter of
**M/S ELITE PHARMACEUTICAL PRIVATE LIMITED**

**Between:**

Sri Thirupathi Reddy Lakkireddy,
S/o Lakkireddy Buchil Reddy,
H.No.1-48/3/2, Shankiar Nagar,
Chanda Nagar, Hyderabad
Telangana State – 500050. ... Appellant/Shareholder

**A N D**

The Registrar of Companies,
2nd Floor, Corporate Bhawan,
Tattiannaram, Nagole,
Bandlaguda, Hyderabad.
Telangana State – 500068. ... Respondent

**Date of Order: 26.09.2022**

**Coram:**

Dr. Venkata Ramakrishna Badarinath Nandula, Member, Judicial
Sri Veera Brahma Rao Arekapudi, Member, Technical

**Counsel present:**

For the Appellant : Ms. G. Sumathi

For the Respondent : Mr. Gandikota Mahesh, ARoC, Hyderabad

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**Per : Bench**

**ORDER**

1. Under consideration is an appeal filed under Section 252 (3) of the Companies Act, 2013 (hereinafter referred to as "the Act, 2013"), by a shareholder-cum-director of M/S Elite Pharmaceutical Private Limited (hereinafter referred to as "the Company"), appealing against the action of the Registrar of Companies, Telangana (hereinafter referred to as the "RoC") in striking off the name of the Company in the Register of Companies for the State of Telangana and seeking restoration of the name of the Company in the Register of Companies for the State of Telangana.

2. Facts of the matter, in brief, are as follows:

   a) The Company, bearing CIN: U24232TG2012PTC080006, was incorporated on 29.03.2012, under the provisions of the Companies Act, 1956, in the erstwhile State of Andhra Pradesh. The authorised share capital of the Company was Rs.50,00,000/- (Rupees Fifty Lakh Only), divided into 50,000 equity shares of Rs.100/- (Rupees Hundred Only) each. The paid-up share capital of the Company was Rs.15,00,000/- (Rupees Fifteen Lakh Only), divided into 15,000 equity shares of Rs.100/- each.

   b) The Appellant, was a director and a shareholder of the Company. The Company had three shareholders viz., Sri Thirupathi Reddy Lakkireddy, Smt. Lakkireddy Pallavi and Smt. Mounika Ganapuram, having a shareholding pattern of 600 (40%), 7500 (50%) and 1500 (10%) respectively.

   c) The Company was established with an object to carry on the business to produce, process, prepare, treat, disinfect, job work or otherwise to

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deal in all types, descriptions, specifications, strengths and applications of pharmaceutical and chemical products of medicaments in all its branches such as allopathy, ayurveda, homeopathy etc., and to carry on the business as licensers, licensees, dealers, distributors, buyers, sellers, resellers, traders, importers, exporters, stockists and to carry on the activity of research development, discovery etc., in respect of bulk drugs, formulations and other allied products.

d) The Company did not file its Annual Returns and Financial Statements with the RoC, for the years 2018-19, 2019-20 and 2020-21.

e) Form STK-1 had been received by the Company and its shareholders, but the same is not traceable and is misplaced. The failure on the part of the Company in filing the Financial Statements and Annual Returns and the inability to respond to the notices of the RoC, within the stipulated time, is purely due to oversight and unintentional.

f) The RoC issued the Form No. STK-5 notice, dated 25.01.2022, proposing to remove the name of the Company from the Register of Companies.

g) Subsequently, the RoC struck off the name of the Company and removed it from the Register of Companies, vide STK-7 notice, dated 29.03.2022.

h) Failure to respond to the notice/s was an inadvertent mistake and was neither intentional nor deliberate. The Appellant undertakes to file all the pending statutory returns, statements and documents required under the Companies Act, 2013 within the prescribed time as and when

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the name of the Company is restored in the Register of Companies maintained by the RoC.

i) As a result of the impugned action of the RoC, the authorised signatories and the directors of the Company are unable to manage and operate the affairs of the Company.

j) The copies of the Financial Statements of Profit and Loss Account and the Balance Sheets, along with the Directors' Report and the Auditor's Report for the financial years 2018-19, 2019-20 and 2020-21 clearly show the profit and loss and that the Company is continuing its operations. However, the Company failed to file its financials and annual returns within the time prescribed under Section 92 and Section 137 of the Companies Act, 2013.

k) The Company's income tax returns for the assessment years 2017-18, 2018-19 and 2019-20 have been attached and so are its IT return acknowledgements for the said years. The same will be filed with the RoC, no sooner than the status of the Company becoming "active", with the orders of this Tribunal and as soon as the Income Tax Department enables the Company to file the pending returns, online.

l) The Company has not deposited or received any cash during the period of demonetisation. A copy of the statement of the account maintained with the Bank of India, Ameerpet branch, vide Account No. 862920110000581, for the period from 01.01.2017 to 27.07.2022, has been attached.

Hence, the instant appeal praying that the name of the Company be restored on the Register of Companies, Telangana and that the directors

and all other persons be placed in the same position as nearly as may be and restore their Directors Identification Numbers, as if the name of the Company had not been struck off from the Register of Companies.

3. The RoC, Hyderabad, has filed a report, stating that the Company had defaulted in filing its statements and annual returns for more than two years and hence, it was identified for striking off, under Section 248(1) of the Act, 2013. It was stated that the Appellant may be directed to file all pending financial statements, annual returns and IT returns for the relevant assessment years and also to produce the acknowledgement copies of the IT Returns. It was further observed that as per the balance sheets for the financial years 2018-19, 2019-20 and 2020-21, the Company has not generated revenue from its operation. Therefore, it was stated that the Applicant may be put to strict proof of having carried out business.

4. We have heard the learned counsel for the Appellant and the learned ARoC. Perused the records.

5. It is indicated that the failure of the Company to furnish the statutory returns with the RoC was not intentional. Apparently, the Company has been carrying on its operations as the financial statements would indicate. Unless the name of the Company is restored, it will prejudicially affect its prospects and adversely impact the directors in their future endeavours. The promoters of the Company as well as the Appellant are keen to carry on and perform the objects of the Company in right earnest. The Company is continuing its business. Unless the name of the Company is restored in the Register of Companies it would suffer financially and may go out of business.

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6. In the light of the above, we are satisfied that the name of the Company should be restored in the Register of Companies.

7. Therefore, the impugned order, dated 29.03.2022, is set aside. The Registrar of Companies, Telangana, is directed to restore the name of the Company in the Register of Companies for the State of Telangana, and restore the original status of the company as if the name of the Company has not been struck off from the Registrar of Companies, with resultant and consequential actions like changing the status of the Company from "struck off" to "active", subject to the following:

   i. The Company shall, within 30 days from the date on which its name is restored in the Register of Companies, file all pending Financial Statements, IT returns, Annual and Statutory returns with the RoC, Telangana, as required under the Act, 2013 and Rules made thereunder.

   ii. The Company shall, within 30 days from the date of this order, deliver a certified copy of this order to the RoC and pay a sum of Rs. 30,000/- (Rupees Thirty Thousand Only) towards cost to the RoC to defray the expenses incurred by the RoC, through online payment portal in the website of the MCA, under miscellaneous fee, by mentioning the particulars as "payment of cost for revival of Company pursuant to orders of Hon'ble NCLT, Hyderabad, in Company Appeal No. 18 of 2022".

   iii. Upon compliance, the RoC, Telangana, on receipt of this order shall, in his official name and stamp, publish the order in the Official Gazette and restore the name of the Company in the Register of Companies, Telangana State, forthwith.

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iv. The order however shall not fetter the authority of the RoC to take appropriate action against the Company for any other violation either prior to 29.03.2022 or in the interregnum.

v. Needless to say, failure to comply with any of the conditions would nullify the effect of this order.

vi. The Company's representative, who has filed the instant appeal on behalf of the Company, is directed to personally ensure compliance of this order.

8. This appeal is, therefore, allowed, with the aforementioned directions.

-Sd/-

**Veera Brahma Rao Arekapudi**
Member, Technical

-Sd/-

**Dr. N.V. Ramakrishna Badarinath**
Member, Judicial