

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

CP No. 189/252/NCLT/MAH/2019

Under section 252 of Companies Act, 2013

In the matter of

Yule Investments Pvt. Ltd.

Through its Director & Shareholder

Mr. Praveen Motiram Jhangiani

Reg. office at: 3rd Floor-11, Plot-101, Basant

Apartment, G.D. Somani Marg, Cuffe Parade,

Mumbai 400005

Maharashtra

... Appellant/Petitioner

V/s

The Registrar of Companies, Mumbai

Everest Building, 5th Floor, 100 Marine Drive,

Mumbai -400002

...Respondent

Order Dated : 23.07.2019

Coram:

Hon'ble Member (Judicial) : Mr. V. P. Singh,

Hon'ble Member (Technical) : Mr. Ravikumar Duraisamy

For the Petitioner : Ms. Priyanka Jain, PCS

For the Respondent: None Present

Perse Hon'ble Shri V. P. Singh , Member (Judicial)

ORDER

1. This Petition is filed by “**Yule Investments Pvt. Ltd.**”, represented through its Director & Shareholder Mr. Praveen Motiram Jhangiani seeking relief against the respondent, *inter-alia* among other things, to restore the name of

the company in the Register of Companies maintained by the Registrar of Companies, Mumbai.

1. The Appellant/Petitioner submitted that the company was incorporated on 11.09.1995 under the Companies Act, 1956. The company has failed to file its Statutory Returns (Financial Statements and Annual Return) since 2015. Consequently, RoC Mumbai Struck Off the name of the company from the Register of Companies u/s 248 (5) of the Companies Act, 2013.
2. The Authorized share Capital of the Company is INR 10,00,000/- (Rupees Ten lakh only) consisting of 1,00,000 (One lakh) equity shares of Rs. 10/- (Rupees Ten only) each and the issued, subscribed and paid up share capital is Rs. 1,00,000/- (Rupees one lakh only) consisting of 10,000 (Ten Thousand) equity shares of INR 10/- (Indian Rupees Ten only) each, as per the records available on the Ministry of Corporate Affairs Portal.
3. The petitioner states that the objects with which the Company was incorporated is as under:

“To Carry on in India and elsewhere The Business of an Investment company and for that Purpose acquire Shares, stock , Debentures , Bond, notes, obligation and any other securities and instrument of any other nature by original Subscription, private placement, Contract, transfer, purchase, underwriting, participation in syndicate or otherwise whether fully paid or not or to hold that either in the name of the company or in the name of the nominees or else as may deem fit and to carry on the Business of Finance, leasing and hire purchase, LC discounting, Bill discounting and to deal with any other instrument, business of Share broking and sub-broking and activities of merchant Banking of all this aspect and to become the member of any stock exchange subject to the permission of necessary Authorities”.
4. The petitioner further states that the Company is **‘going on entity’** and it has no intention of striking off or closing down its business, however it missed

the deadline to respond the RoC within *thirty days* from date of receipt of Notice. Therefore, the name of the Company was removed from the register of Registrar of Companies.

5. Further, the Company is having huge assets to fulfill its commitment or repay its debts and is capable to peruse its object. If the name of the Company is restored in the register of Respondent, then there would be no loss to anyone, and the company will start running its business, otherwise the Company and its Creditors will have to suffer irreparable loss, in case its name is not restored and the Company would be rest from pursuing its business activities.
6. It is submitted that the Company is having Short Term Borrowing of Rs. 1,29,72,36,974 (Rupees One Hundred Twenty Nine Crore Seventy Two Lakhs Thirty Six Thousand Nine Hundred and Seventy Four Only) including Bank Loans as on 31.03.2018. If the name of the Company is not restored, then creditors and Bankers of the Company shall also have to bear the losses.
7. It is further submitted that the Applicants have invested their hard-earned money and valuable time in the affairs of the Company.
8. It is further submitted that the Balance Sheet and Annual Returns have been prepared within due date and has been adopted by shareholders in General Meeting, but the same could not be filed within due date due to inadvertent of management as the lake of adequate guidance from the professionals.
9. As per the averments, the Appellant/Petitioner claim that the Petitioner Company is regular in filing of Returns with the Income Tax Department from AY 2016-17 till AY 2018-19. A copy of Financial Statements and Income Tax Returns of the Company has been enclosed with the petition as **EXHIBIT "F"**.
10. As per the averments, the Appellant/Petitioner further claim that the Petitioner Company is operative and intended to complete the pending Annual filing with the ROC and Company is having Continuous turnover

since last three years therefore the petitioner wants to restore the name of the Company in the Register of the Respondent.

11.The Respondent side filed an Affidavit in reply which is submitted to the Tribunal on 13.03.2019 explaining the sequence leading to the striking off of the name of the company. The Respondent side issued STK-1 notice and STK-5 dated 19.07.2018. In addition to the publication of the name of the company on web site of the Ministry, the name of the company was also published in official gazette and also another public notice was issued in leading English newspaper (Times of India) and a widely circulated vernacular language newspaper (Maharashtra Times– Marathi) on 21.07.2018. Respondent further submitted that in absence of any representation against the proposed strike off action, the Registrar struck off the name of the company on 11.09.2018 and the dissolution order was published on the website of the Ministry vide STK 7 on 12.09.2018.

12.As directed by the Tribunal, PCS has submitted an affidavit of service dated 30.04.2019, confirming service of notice on Income Tax Department, Regional Director and Registrar of Companies and the same is on record. No comments received from IT Department.

13.On perusal of the report of the RoC, Mumbai, it appears that the name of the Company was struck off, for the failure on the part of the company to file the statutory documents since 2015, as mandatorily required under the statute. The petition for restoration of name of the Company which remained struck off from the register maintained by Registrar of Companies can be permitted only on the compliance of statutory requirements as per law, as pointed out by the Registrar of Companies in his report. Sub Section (1) of Section 252 of the Companies Act, 2013 deals with the application for restoration of name of such struck off company to the register of functional companies which reads as under:-

“ Any person aggrieved by an order of the Registrar, notifying a company as dissolved under section 248, may file an appeal to the Tribunal within a period of three years from the date of the order of

the Registrar and if the Tribunal is of the opinion that the removal of the name of the company from the register of companies is not justified in view of the absence of any of the grounds on which the order was passed by the Registrar, it may order restoration of the name of the company in the register of companies.”

Provided that before passing any order under this section, the Tribunal shall give a reasonable opportunity of making representations and of being heard to the Registrar, the company and all the persons concerned:

Provided further that if the Registrar is satisfied, that the name of the company has been struck off from the register of companies either inadvertently or on the basis of incorrect information furnished by the company or its directions, which requires restoration in the register of companies, he may within a period of three years from the date of passing of the order dissolving the company under section 248, file an application before the Tribunal seeking restoration of name of such company.”

14. Upon perusal of the documents submitted by the Petitioner Company, the Bench has satisfied that the company has been carrying on its business/operation as per section 248 of the Companies Act, 2013. The Bench has further observed that during the Financial Year 2017-18 the company has earned more than ₹6 Crores as Revenue from Operations, more than ₹7.37 Crores as other income, more than ₹3.71 Crores as Other Expenses, more than ₹11 Crores as Finance Cost, ₹1,29,72,36,974/- as Short Term Borrowings, more than ₹9 Crore as Inventories. The company has Cash and Bank Balances of more than ₹29.97 Lakhs for the Financial Year ending 31, March 2018.

15. In view of the above background, we are satisfied that the company has been carrying on its business/operation as per section 248 of the Companies Act, 2013. On hearing the submissions of the Professional appearing on behalf of Applicant, perusal of the Report of Registrar of Companies, Mumbai and on perusing the documents submitted, it is clear that the Company is in

operation, and unless the relief sought is granted to the company, the Company, Member, Employees, Creditors will be put to great hardship.

16.As observed above, the books of the Appellant reflects that the company is carrying on business/operation as per section 248 of the Companies Act, 2013 and the Members intend to continue the business operations of the company. Therefore, in the interest of justice, the name of the company deserves to be restored in the Register of Companies maintained by the Respondent Registrar of Companies.

17.Given the above facts and circumstances, we are satisfied that the prayer sought by the Petitioner company deserves to be allowed.

ORDER

Appeal No. 189/2019 filed by “**Yule Investments Pvt. Ltd.**”, represented through its Director & Shareholder Mr. Praveen Motiram Jhangiani seeking restoration of the company’s name in the Register of company maintained by the RoC, Mumbai is admitted with the following terms.

Accordingly, the Respondent is directed to restore the name of the Petitioner company subject to payment of a sum of ₹2,00,000/- (Rupees Two Lakhs Only) as cost payable in the account of “Prime Minister’s National Relief Fund” within 10 days from the date of receipt of copy of this order.

The company shall file all the pending Financial Statements and Annual Returns with all the applicable fees and late fees with the Respondent within a period of 30 days from the date of receipt copy of this order, failing which, this order will stand vacated automatically.

SD/-

RAVIKUMAR DURAISAMY
MEMBER (TECHNICAL)

Pratiksha Shukla

SD/-

V.P. SINGH
MEMBER (JUDICIAL)

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