

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court-I)
KOLKATA**

I.A. (I.B.) No. 65/KB/2023
In
CP No. 1147/KB/2020

*An application under Rule 11 of National Company Law Tribunal Rules, 2016 read
with section 252(3) of Companies Act, 2013.*

In the matter of

Janpragati Commodities Private Limited

....Financial Creditor

-Versus-

Radisson Resources Private Limited

..... Corporate Debtor

And

Radisson Resources Private Limited

....Struck Off

-Versus-

Registrar Of Companies, ROC- Jharkhand, Ministry of Corporate Affairs, mangal Tower, 4th
Floor, Old Hazaribagh Road, Near Kantatoli Chowk, Ranchi – 834001, Jharkhand.

....Respondent

Date of Pronouncement: 18/12/2023

Coram

Rohit Kapoor, Member (Judicial)

Balraj Joshi, Member (Technical)

Appearances (via video Conferencing/physically):

Ms. Vedika Sureka, Adv. : For Liquidator/RP

ORDER

Per: Rohit Kapoor, Member (Judicial)

- 1) This Company Petition has been filed by the Resolution Professional of **Radisson Resources 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, West Bengal. It is stated that the name of the Company was **struck off** on 09 February 2022.
- 2) The Financial Creditor being Janpragti Commodities Private Limited filed an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 being CP(IB) No. 1147/KB/2020 before the this Adjudicating Authority for initiation of Corporate Insolvency Resolution Process against Radisson Resources Private Limited.
- 3) The Hon'ble National Company Law Tribunal, Kolkata, Bench- I vide its order¹ dated 27th January, 2022 admitted the application bearing CP (IB) No.1147/KB/2020 for initiation of CIRP proceedings against the Corporate Debtor and appointed Mr. Neeraj Jain as the Interim Resolution Professional. In terms of Section 15 of the Insolvency & Bankruptcy Code, 2016, public announcement was made by the Interim Resolution Professional on 29th January, 2022 after which all the claims were collated. The Committee of Creditors was duly constituted and the 1st meeting of the Committee of Creditors was held on 26th February, 2022.
- 4) Subsequently, an application being IA(IB) No. 375/KB/2022 under Section 22 of the Insolvency and Bankruptcy Code, 2016 was preferred before the this Adjudicating Authority praying for replacement of Mr. Neeraj Jain, the Interim Resolution Professional with Mr. Pratap Mukherjee as the Resolution Professional as proposed by the Committee of Creditors. The Adjudicating

¹Annexure A to the application

Authority vide order² dated 25th May, 2022 disposed of IA (IB) No. 375/KB/2022 and appointed Mr. Pratap Mukherjee as the Resolution Professional of the Corporate Debtor to carry out the functions as per the Code.

- 5) Immediately after being appointed as the Resolution Professional of the Corporate Debtor and while performing his duties in respect of the same, it came to the notice of the Resolution Professional that the master data of the Corporate Debtor available in the website of the Ministry of Corporate Affairs was reflecting as "Strike Off" as well as "Active Non-Compliant" in the columns "company status (for e- filing)" & "Active Compliance" respectively. However, since the Corporate Debtor is under Corporate Insolvency Resolution Process and is being represented by the Resolution Professional, the company status of the Corporate Debtor for e-filing purposes shall be mentioned as "Active" instead of "Strike Off" and "Active Compliant" instead of "Active Non-Compliant".
- 6) The applicant therefore filed an application being IA No. 814/KB/2022 praying for change of the status of the corporate debtor from Strike off to active under Section 252(3) of companies act, Section 60(5) of IBC, 2016 read with Rule 11 of NCLT Rules, 2016. The application when came up for hearing on 29th November, 2022 the Hon'ble Tribunal passed order³ directing the applicant to file an appropriate application to change the status of the company from strike off to active.
- 7) Accordingly, the present application has been filed under section 252(3) of the Companies Act, 2013 read with Rule 11 of the National Company Law Tribunal Rules, 2016 for appropriate directions for change in the company status of the Corporate Debtor for e-filing purposes as well as Active Compliance, respectively in the master data available in the website of Ministry of Corporate Affairs so that there is maximization of value of the assets of the Corporate Debtor as well as the Resolution Professional is able to

²Annexure B to the application

³Annexure D to the Application

conduct a smooth Corporate Insolvency Resolution Process of the Corporate Debtor.

8) ***Report from the Registrar of Companies, Jharkhand***

The contents of the report dated 28.10.2022 filed by the Registrar of Companies, Jharkhand (“ROC”) are summarized hereinafter:

- a) The Company has not filed its Balance Sheets since the financial year 31.03.2015 and Annual Returns for the financial year 31.03.2015, 31.03.2016, 31.03.2018 to 31.03.2022 with the office of the respondent.
- b) Radisson Resources Private Limited was incorporated on 27.11.2013 and the aforesaid company was struck off 09.02.2022 after complying with the provision of Section 248 of the companies Act, 2013.
- c) The ROC has issued notices to the companies as well as the directors under Section 248(1) (in e-form STK-5) of the companies Act, 2013 read with Rule 7 of the Companies (Removal of names of Companies from the register of companies) Rules 2016 for removal of name of the company from the ROC as there was reasonable cause to believe that the company was not carrying on business or in operation for the period of two (2) immediate preceding financial years and has not made any application within such period for obtaining the status of dormant company under Section 455 of the Companies Act, 2013.
- d) As per provision of Section 248(5) of the Companies Act, 2013 after the expiry of the prescribed time period and as no response has been received from the company and the public, a notice (in STK 7) dated 09.02.2022 was issued by the ROC reflecting the name of the Company as strike off w.e.f. 09.02.2022. The applicant Company's name is appearing at Sl. No. 314 of the ROC notice (STK 7) dated 09.02.2022 and the same was published in the Official Gazette on 12.02.2022.
- e) The status of the company is 'struck off' and the company can be allowed to be revived under Section 252 of the Companies Act, 2013 on its own merits directing petitioner to file all the pending statutory returns etc, with the additional fees within 30 days from the date of passing of the order

failing which the respondent may be directed to strike off the name of the company again without giving any further notice to the petitioner.

Analysis and Findings:

- 9) Heard the Ld. Counsel on behalf of the Applicant and perused the records.
- 10) Section 252 (3) of the Companies Act, 2013 gives the power to this Tribunal to restore the name of the company to the register of companies. Section 252(3) is reproduced hereinunder:

“(3) If a company, or any member or creditor or workman thereof feels aggrieved by the company having its name struck off from the register of companies, the Tribunal on an application made by the company, member, creditor or workman before the expiry of twenty years from the publication in the Official Gazette of the notice under sub-section (5) of section 248, may, if satisfied that the company was, at the time of its name being struck off, carrying on business or in operation or otherwise it is just that the name of the company be restored to the register of companies, order the name of the company to be restored to the register of companies, and the Tribunal may, by the order, give such other directions and make such provisions as deemed just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off from the register of companies.”

- 11) the power of this Adjudicating Authority to change the status of a company in the Register of Companies, from “struck off” to “active”, it is perlike to refer to the decision taken by the
- 12) Further, the Hon’ble National Company Law Appellate Tribunal (NCLAT) in the matter of ***Elektrans Shipping Pte. Ltd. vs. Pierre D’Silva and Ors.***⁴ has made the following observation:

“16. From sub-section (3) of Section 252, it will be evident that the Tribunal, by the order, before expiry of twenty years from the publication in the Official Gazette of the Notice under sub-Section

⁴Company Appeal (AT) (Insolvency) No. 754 of 2019

(5) of Section 248, on an application made by a creditor or workman, may pass order and give such other directions and make such provisions as deemed just for placing the name of the Company and all other persons in the same position as nearly as may be as if the name of the Company had not been struck off from the Register of Companies.

17. The Tribunal is the Adjudicating Authority in terms of Section 60(1) of the I&B Code. Hence, on one side it plays role of 'Adjudicating Authority' and on the other 'Tribunal' under the Companies Act. Therefore, if an application is filed by the 'Creditor' ('Financial Creditor' or ('Operational Creditor') or workman ('Operational Creditor') before the expiry of twenty years from the publication in the Official Gazette of the Notice under subsection (5) of Section 248, it is open to the Adjudicating Authority to give such directions and make such provisions as deemed just for placing the name of the Company and all other persons in the same position nearly as may be as if the name of the Company had not been struck off from the Register of Companies.

18. As per amended Clause (94-A) of Section 2 of the Companies Act, 2013 "winding up" means 'winding up under this Act or liquidation under the Insolvency and Bankruptcy Code, 2016, as applicable'. Therefore, it is clear that the Company, whose name has been removed from the Register of the Companies can be liquidated under the I&B Code."

- 13) It is seen that the Corporate Debtor being the 'struck off' company herein was admitted into CIRP vide order⁵ dated 27th January, 2022. Thereafter, an order for liquidation of the Corporate Debtor has also been passed by this Adjudicating Authority on 23 March 2013. The current "struck off" status of the Corporate Debtor is bound to hamper the chances of its business being sold as a "going concern" which in turn will adversely

⁵Annexure A to the application

affect the Creditors and stake-holders of the Company. As such, we find that it is not only just but also necessary that the name of the company be restored to the Register of Companies.

- 14) It is noted that according to the ROC Report the Company had not filed its Balance Sheets since the financial year 31.03.2015 and Annual Returns for the financial year 31.03.2015, 31.03.2016, 31.03.2018 to 31.03.2022.
- 15) It was also stated therein that only after compliance of the requirements to be met under Section 248 of the Companies Act, 2013, the ROC has struck off the name of the company from the register. ROC Jharkhand has **not objected** to this application for restoration of the name of the company.
- 16) Therefore, in light of the aforementioned facts, the circumstances and the extant law, 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, Jharkhand, 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’**.
 - b) The Petitioner Company is directed to file all pending statutory document(s) including Balance Sheets for the financial *years 2015-16, 2016-17, 2017-18, 2018-19, 2019-20, 2020-21, 2021-22* and Annual Returns for the financial years ending on *2017-18, 2018-19, 2019-20, 2020-21, 2021-22* along with prescribed fees/additional fee/fine as decided by Registrar of Companies, West Bengal within 45 days from the date on which its name is restored on the register of companies maintained by the Registrar of Companies, West Bengal.
 - c) The restoration of the Company’s name is also subject to the payment of cost of **Rs. 80,000/-** (Rupees Eighty Thousand only) 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 I.A. (I.B.) No.65/KB/2022 in C.P. No. 1147/KB/2020”**.

**In the National Company Law Tribunal,
Kolkata Bench (Court- I)**

I.A.(I.B) No. 65/KB/2022
In C.P (IB) 1147/KB/2020

- d) The petitioner is directed to deliver a certified copy of this order with Registrar of Companies, Jharkhand 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, Jharkhand is directed to publish the order in the Official Gazette under his office name and seal;
 - f) 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, Jharkhand to take appropriate actions in accordance with law, for any other violations / offences, if any, committed by the petitioner company prior to or during the period the name of the Company remained struck off.
- 17) The I.A.(I.B.) No. 65/KB/2022 is **disposed of** accordingly. List the main petition on **30.01.2024**.
- 18) The Registry is directed to send e-mail copies of the order forthwith to all the parties inclusive of the Counsel.
- 19) Urgent certified copy of this order, if applied for be issued upon compliance with all requisite formalities.

Balraj Joshi
Member (Technical)

Rohit Kapoor
Member (Judicial)

Order signed on 18th of December, 2023

SM(LRA)