

(2024) 03 NCLT CK 0062

National Company Law Tribunal, Mumbai Bench Court II

Case No: CA No. 141/2023

Susheela Rajeswara Rao Donka

APPELLANT

Vs

Registrar Of Companies Mumbai

RESPONDENT

Date of Decision: March 26, 2024

Acts Referred:

- Companies Act, 2013 - Section 164, 248, 248(2), 252, 242(1), 455

Hon'ble Judges: Kuldip Kumar Kareer, Member (J); Anil Raj Chellan, Member (T)

Bench: Division Bench

Advocate: Vijay Tiwari, Siddharth Doshi, Shivraj Ranjeri

Final Decision: Allowed

Judgement

1. This present Petition has been filed under Section 252 of the Companies Act, 2013 (Act) by Shareholder Ms. Susheela Rao Donka for Preqte Private Limited ("the Company") through its praying for restoring 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:

1. "To carry on India or anywhere in the world, the business of manufacturing, buying, selling, importing, exporting, trading, testing, distribution, stocking, registering, packing, marketing and generally dealing in all types of pharmaceutical, nutraceutical, food, chemical, surgical, medical, dental and scientific equipment, instruments and accessories and diagnostic kits and Re-agents diagnostic equipment's, healthcare aids and instruments of similar varieties and descriptions.

2. To carry on the business of vialling, bottling, repacking, processing of tablets, capsules, syrups, injections, ointments etc. and also to carry on the business of chemists, druggists, buyers, sellers, agents, distributors and stockists of all kind of pharmaceuticals and allied products.

3. To carry on in India or abroad business of importers, merchants, general order suppliers, commission agents, representatives, distributors, royalty owner, contractors, auctioneers, indent agents, passage agents, factors, organisers, concessionaries, sale agent, subagents in connection with the business as referred to in sub-clause (1) above.”

3. The Applicant submits that the company was incorporated on 21.11.2020 under the Companies Act, 2013. The Authorized Share Capital of the Company is Rs. 1,00,000/- divided in to 10,000 number of equity shares of Rs. 10/- each and the Issued, Subscribed and Paid Up Capital of the Company is Rs. 1,00,000/- divided into 10,000 number of equity shares of Rs. 10/- each.

4. 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 (1) 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.

5. The Petitioner submits that the Company has been active since its incorporation and has also been maintaining all the requisite documentation, as per the provisions of the Companies Act, 2013.

6. The Petitioner submits that due to non-filling of e-form 20A inadvertently for the preceding years with the Registrar of Companies, Mumbai, the Respondent has presumed that the Company has not undertaken any business or has ceased to carry on business for the financial years.

7. The Applicant Company further puts on record the bank account statements and GST returns of the Company where in it is clearly evident that Company is active and the account was not dormant when its name was struck off from the register maintained by RoC.

8. The Applicant Company has neither made any application within such period for obtaining the status of dormant company under Section 248(2) of the Companies Act, 2013. Further the Company submits after Demonetization, no huge amount in cash is

deposited in Company's Bank Account

9. The Company had received full subscribed capital in the bank account No. 1000005004699 with ICICI Bank on 21st December, 2020, i.e., before expiry of 180 days from the date of incorporation. The Petitioner submits that in the event of revival of the Company and restoration of the name of the Company, the Company shall file all outstanding statutory documents i.e. e-form INC-20A and the Financial statements and annual returns till 2023 along with fees and additional fees.

10. In support of the above facts, the Petitioner has annexed the Copies of Financial statements for the year 2021-22 and Provisional Financial statements for the year 2022-23, Copy of Public Notice dated 13th Sept, 2022, Copy of STK-7, Bank Statement of the Company and GST Returns filed by the Company.

11. As per the Respondent, the Company has also not filed its financial statement and annual returns as per the provision of the Companies Act, 2013 and 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. The Respondent states that the Company has failed to comply with statutory compliances under the Companies Act, by not filing its statutory returns for a continuous period of more than two years. It is submitted that the RoC/Respondent had issued a public notice in form STK-5 dated 23.09.2022 with it being published on the website on 17.12.2022 and in a leading newspaper (Times of India) and newspaper in vernacular language (Maharashtra Times-Marathi) seeking objections against the proposed striking off the name of the Company from the records of RoC.

12. In absence of any representation against the proposed striking off action, the Registrar (Respondent) struck off the name of the Company on 01.10.2022. The dissolution order was published on the website of Ministry vide STK-7 on 17.12.2022.

13. 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 ground that failure to file Form 20A and other statutory returns was unintentional and that the Company had received full subscribed capital on 21.12.2020 i.e. within the statutory period of 180 days from the date of incorporation.

14. 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 (Preqte 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, form of 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 /-@ 25,000 for each year of Non-filing. The imposed cost shall be paid by way of Demand Draft drawn in favour of "Pay and Accounts Office, Ministry of Corporate Affairs, Mumbai" within 30 days from date of the receipt of this order.

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

15. The Application stands allowed on the aforementioned terms