

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL****NEW DELHI****COMPANY APPEAL (AT)No. 188 of 2019**

(Arising out of impugned order dated 6<sup>th</sup> May, 2019 passed by the National Company Law Tribunal, Mumbai in Company Petition No.3259/252(1)/NCLT.MAH/2018)

**In the matter of:****1. Mr. Deorao Shriram Kalkar**

A-303, Twin Tower,  
Aundh,  
Pune 411007

**2. M/s Traveltime Cars India Pvt Ltd.,**

B-101/103,  
Astral Court,  
Above Axis Bank,  
Sanewadi,  
Aundh,  
Pune-411007.

Appellant

Vs

**Registrar of Companies, Pune**

PCNTDA Green Building,  
Block A, 1<sup>st</sup> and 2<sup>nd</sup> Floor,  
Near Akurdi,  
Railway Station, Akurdi,  
Pune 411044

Respondent

**Ms Yogita Bhatia, Company Secretary and Mr. Rohit, CS for Appellant.  
Mr Kamal Kant Jha, Sr. Panel Counsel for ROC, Pune/R1.**

**JUDGEMENT**  
**(6<sup>th</sup> December, 2019)**

**MR. BALVINDER SINGH, MEMBER (TECHNICAL)**

The appellants have filed this appeal under Section 421 of Companies Act, 2013 against the order dated 06.05.2019 passed by the National Company Law Tribunal, Mumbai Bench, Mumbai whereby dismissing the appeal and

affirmed the order of striking of the name of the appellant company from Register of Companies, Pune.

2. Appellant No.2, Traveltime Cars India Private Ltd, is a company incorporated under the Companies Act, 1956 and having its registered office at B-101/103, Astral Court, above Axis Bank, Sanewadi, Aundh, Pune. Appellant No.1 is shareholder of the Appellant No.2. Appellants were served STK 1 notice under Section 248(1)(c) of the Companies Act, 2013 on 11.3.2017. Appellant No.2 company vide its reply dated 29<sup>th</sup> March, 2017 intimated the ROC that inadvertently regulatory filings for the year ending 31<sup>st</sup> March, 2015 and 2016 are yet to be filed and the Company is in process of completing the same at the earliest. Thereafter a public notice was issued on 7.4.2017, 27.4.2017 and 11.7.2017 (Page 295) the company's name was struck off from the register of companies.

3. The order was challenged in Company Petition No.3259/252(1)/NCLT.MAH/2018) before NCLT, Mumbai. However, by the impugned order dated 06.05.2019 NCLT has dismissed the appeal on the ground that the company did not generate any income/revenue from its operations since the financial year ending 31<sup>st</sup> March, 2014 to 31<sup>st</sup> March, 2017 and the company did not spend any amount towards Employee Benefit Expenses and the fixed assets of the company is Nil; Tangible Assets Nil, therefore, the action taken by the ROC is justified and the Bench did not find any ground to interfere with action of striking off by ROC. Being aggrieved the appellants have filed the present appeal.

4. Learned counsel for the appellants submits that the company have a Fixed Deposit Receipt with Bank of Maharashtra amounting to

Rs.1,50,00,000/- (Rs. One Crores and Fifty lacs only) with Bank of Maharashtra on which bank guarantee was issued in favour of Atal Indore City Transport Services Ltd and the same is valid up till 11<sup>th</sup> November, 2017 is further extended upto 10<sup>th</sup> November, 2018. The company is regularly receiving the interest on the said FDR from the bank and the TDS is being deducted by the Bank on payment of interest and the same is deposited with Income Tax Authorities. Appellant stated that the company is regularly filing the income tax returns. Appellants submits that after the expiry of term of Bank Guarantee, the funds of the company would be released and the directors of the company would be in a position to take necessary decision about working of the company.

5. Learned counsel for the Respondent stated that due to failure in filing of its statutory returns for a continuous period of more than two years, the name of the appellant company was considered for striking off by the ROC, Pune in a suo moto action under the provisions of Section 248 of the Companies Act, 2013. Learned counsel for the Respondent submitted that STK 1 notice dated 11.03.2017 was issued to appellant regarding removal of the name of the company with direction to submit any representation against the striking off the name of the appellant company. Learned counsel stated that the fact of non-filing the statutory returns have been admitted by the appellant. Learned counsel for the Respondent submitted that the on analysis of the Balance Sheet and the Profit and loss account of the appellant it is observed that the company has not generated any income/revenue from its operations since the financial year ending 31.3.2014 to 31.3.2017 and the company did not spend any amount towards Employee Benefit expenses for

these financial years and Fixed Assets of the company is Nil, tangible assets Nil. Learned counsel for the Respondent stated that the ROC has rightly taken a decision to strike off the name of the appellant company.

5. We have heard the parties and perused the record.

6. Learned counsel for the appellant during the course of arguments admitted that they have not filed the statutory returns for more than two years as per Companies Act, 2013. We also note that the appellant company on receipt of STK-1 notice from ROC, vide its reply dated 29<sup>th</sup> March, 2017 intimated the ROC that inadvertently regulatory filings for the year ending 31<sup>st</sup> March, 2015 and 2016 are yet to be filed. However, the appellant argued that the annual returns and financial statements are ready and are ready to file it immediately. We also note that the appellant has a FD with the Bank to the tune of Rs.1,50,00,000/- and the interest is being received by the appellant and they are duly making provision of income tax in their Balance Sheet. We also note that the appellant has given a performance guarantee. This is an attempt to obtain business and making requisite arrangements including deposit of money as performance guarantee and company not have started its operation but making its efforts/attempt to start a business by exploring the possibility including deposit of guarantee money to the third party. We further note that when the company has responded to the notice issued by ROC, then ROC has also to see that the compliance of Section 248(6) of the Companies Act, 2013 is met.

Section 248(6) of the Companies Act, 2013 reads as under:-

*“(6) The Registrar, before passing an order under sub-section (5), shall satisfy himself that sufficient provision has been made for the realization*

*of all amount due to the company and for the payment or discharge of its liabilities and obligations by the company within a reasonable time and, if necessary obtain necessary undertakings from the managing director, director or other persons in charge of the management of the companies. Provided that notwithstanding the undertakings referred to in this subsection, the assets of the company shall be made available for the payment or discharge of all its liabilities and obligations even after the date of the order removing the name of the company from the register of companies.”*

However, learned counsel for the Respondent in its written submissions as para 9 (Page 3) has stated that the Respondent has not received any reply from the company and its directors. We note that the Appellant has replied vide its letter dated 29.3.2017 (Page 290 of the appeal) and the said letter has the acknowledgement of ROC, Pune. Therefore, it can not be said that the appellant has not replied. Further there is nothing on record that the compliance of Section 248(6) of the Companies Act, 2016 has been made by the Respondent. This fact has also not been noted in the NCLT order. Without complying this provision the ROC vide FORM No.STK5 dated 7.4.2017 has struck off the names of the various companies including the appellant No.2 company. We note that the company is having FDR with the Bank and Performance guarantee has been given and income tax is being deposited on the interest of income.

7. From the above discussions and observations we have come to the conclusion that it would be just that the name of the company is directed to be restored. The following order/directions are passed:-

i) Impugned order is quashed and set aside. The name of the appellant No.1 company shall be restored to the Register of Companies subject to the following compliances:

ii) Appellants shall pay costs of Rs.25,000/- to the Registrar of Companies, Pune within 30 days.

iii) Within 30 days of restoration of the company's name in the register maintained by the ROC, the company will file all their annual returns and balance sheets due for the period ending 31.03.2015 to date. The company will also pay requisite charges/fee as well as late fee/charges as applicable.

iv) In spite of present orders, ROC will be free to take any other steps punitive or otherwise under the Companies Act, 2013 for non-filing/late filing of statutory returns/documents against the company and directors.

The appeal is accordingly allowed.

**(Justice Jarat Kumar Jain)**  
**Member (Judicial)**

**(Mr. Balvinder Singh)**  
**Member (Technical)**

**(Dr.Ashok Kumar Mishra)**  
**Member (Technical)**

**Bm/nn**