

**IS NCLT, EMPOWERED (OR POWERLESS) TO REVIVE
VOLUNTARILY STRUCK-OFF COMPANIES?**

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Section 252 of the Companies Act, 2013, deals with the filing of Appeal/Application with the National Company Law Tribunal (NCLT) for revival of Companies struck-off under Section 248 of the Companies Act. The excerpt of Section 252, is as below:

Sec. 252: Appeal to Tribunal:

(1) **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.

.....

(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.***

This article discusses with the topic whether the **Hon'ble National Company Law Tribunal, is empowered under Section 252(3)**, of the Companies Act, to consider an application under Section 252(3), by the Company itself or its shareholders for revival of a Company, which was voluntarily struck-off by its Board of Directors.

From a plain reading of the provisions of Section 252(1) of the Companies Act, it can be noticed that where a Company is struck-off by the Registrar of Companies (ROC), then an **APPEAL** is to be filed with the NCLT, against such order of the ROC, striking-off the company. The time period is **3 years**, from the date of order of ROC, and ANY PERSON, who is aggrieved by the order of ROC, is eligible to make such application.

Whereas, Section 252(3), deals with an **APPLICATION**, which can be filed by **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 time limit for making the application is before the expiry of 20 years from the publication of removal of the name in the official gazette.

Further the grounds which the NCLT is to be satisfied is that at the time of name of the Company being struck-off from the Register of Members, was **(a)** carrying on business or in operation; or **(b)** otherwise it is **just that** the name of the company be restored to the register of companies.

The basic difference is that in Section 252(1), it is an **APPEAL**, and Section 252 (3), it is an **APPLICATION**.

Decisions of the Hon'ble High Courts and also various NCLT Tribunals, which have allowed and also dis-allowed for Revival of Companies, which were struck-off voluntarily on an application filed by the Company it self, are discussed as detailed below:

VI Brij Fiscal Services P. Ltd. Vs. Registrar of Companies reported in [2010] 155 CompCas 157 (MP):

In the said case, the Hon'ble Madhya Pradesh High Court held that even if a company had its name struck off from the Register of the companies, on its own, still then, in appropriate case, such a company can approach the court with a petition U/s. 560(6) of the Act of 1956 [**Now powers conferred with the NCLT, under Section 252 (3)**], seeking restoration of its name to the Register of Companies. Relevant part of the judgement is reproduced below:

It has been averred by the petitioner that the shareholders of the company are now of the opinion that the circumstances leading to closure of activities of the company and non commencement of business no longer exist and there are favourable circumstances under which the main business of the company as financial and investment consultant can be restarted in the best interest of the company, its shareholders and other concerned who may be directly or indirectly associated with the business activities of the company. In the circumstances the shareholders of the company took a joint decision and vide consent letter dated May 30, 2009, have decided to revive the company. In the circumstances this petition has been filed under Section 560 (6) of the Act seeking a direction to the respondents for restoring the company's name in the Register of Companies.

Having considered the contention raised by learned Counsel for the petitioner and having gone through the provisions contained in Section 560 (6) of the Act and the averments made in the petition I am of the view that it would be just and proper to order restoration of the name of the company in the Register of Companies.

Accordingly, the petition is allowed. The respondent Registrar is directed to restore the name of the company in the Register of Companies treating as if its name had never been struck off from the rolls of the register. The petitioner is directed to deliver the respondent Registrar of Companies a certified copy of this order within the time fixed under Rule 93 of the Rules. The Registrar thereafter shall proceed in the matter in accordance with the Act and the Rules. No order as to costs."

(emphasis supplied)

Intec Corporation Private Vs the Registrar of Companies reported in [2017] 201 ComCas 18 (Delhi):

The Hon'ble Delhi High Court in the above case had taken a similar view. Relevant part of the judgement is reproduced below:

The issue whether the name of a company which has been struck off under the Fast Track Exit Scheme can be restored subsequently, under Section 560 (6) of the Act, has been dealt with by the decision of this Court in Siddhant Garg and Anr vs. Registrar of Companies and Anr., reported as (2012) 187 DLT 501. In this decision, the Court whilst considering a petition under Section 560 of the Act, for restoration of the company's name in the Register of Companies, which was struck off under Simplified Exit Scheme 2003, observed in para 26 of the report as follows:

As a matter of law, it cannot be said that where the company's name had been struck off on an application filed under Simplified Exit Scheme, the company cannot be restored. In fact, the Madhya Pradesh High Court in VI Brij Fiscal Services P. Ltd. v. Registrar of Companies, MANU/MP/0029/2010: (2010) 155 Comp. Cas. 157 (MP) has restored a company which had been struck off under the Simplified Exit Scheme.

In view of the foregoing, and upon considering the facts and circumstances of the present case, I am of the view that it would be just and proper to order restoration of the name of the Petitioner Company in the Register of Companies maintained by the Respondent.

Upon the petitioner company filing all the statutory documents i.e. Annual Returns and Balance Sheets till date, along with the prescribed filing fee and additional fee in compliance with all the statutory requirements, the name of the Petitioner Company, its directors and members shall, stand restored to the Registrar of Companies maintained by the Respondent, in accordance with Section 560 (6) of the Act, as if the name of the Petitioner Company had not been struck off.

(emphasis supplied)

P.K.D. Securities Limited Vs. The Registrar of Companies Shillong CP No.10/2017, before the Hon'ble National Company Law Tribunal, Guwahati Bench:

The Guwahati Bench of the Hon'ble NCLT, in the above said matter, had also taken a similar view, that the Company struck-off voluntarily can be restored. Relevant part of the judgement is reproduced below:

40. Coming back to instant case, it is found that when the company was struck off on 05-12- 2005, the petitioner company was not in a position to carry on its business without incurring huge loss which compelled the company to strike of its name from the Register of Companies. But then, in last couple of years, there have been huge boom in the capital market business. In other words, had the company not been struck off in 2005, it would have reaped huge profits today. In that sense, one may conclude that in the changed situation, the petitioner company has reason to feel aggrieved for being struck off in 2005, of course, on its own request.

41. Above revelations further demonstrate that a company which is struck off from the Register of Companies does not cease to exist completely on its striking off from the register aforementioned. Quite contrary to it, such a company remains in defunct stage for the period so specified in section 252 (3). Therefore, such a company may be brought back to full life any time before the expiry of the prescribed in section 252(3) on fulfilment of certain conditions. Such disclosure also shows the emptiness of the allegation that on striking off the name of the company from the Register of Companies, such a company becomes a non-entity for all practical purposes”.

(emphasis supplied)

From the above discussed statutory provisions and the law declared by various High Courts and NCLT etc., it is evident that the Hon’ble NCLT has been empowered under the provisions of the Section 252 of the Companies Act for issuing orders for restoration of name of the Company, which has been struck-off, even in cases of a voluntary application for being struck-off. However, there have some contrary recent decisions to the above, wherein the NCLT has found itself powerless to revive the Company under Section 252 (3) of the Companies Act.

In the matter of Mahabharat Builders and Developers Ltd., CP No.231/252(3)/2017, before the Hon’ble National Company Law Tribunal, Mumbai Bench:

The Mumbai Bench of the Hon’ble NCLT, in the above said matter, had taken a contrary view and rejected the Application filed, for revival of a company, which was voluntarily struck-off. Relevant part of the judgement is reproduced below:

2. *On perusal of this Application, it appears that this Application has been filed in the name of Managing Director, who is no more in existence after the company has been struck-off from the Register of Companies. Even if this Application is otherwise taken into consideration, by looking at Section 252 (3), this provision could be invoked only when the company is struck-off from the Register of Companies either inadvertently or on mis-information furnished by the Company or its Directors or if any application comes from any member/workman with a grievance saying that this company was struck off while carrying on business. But whereas by looking at the Application filed by the Company, it is on face appears that company has been struck off on the application given by the Company, now it is not the case of the Applicant it was struck off inadvertently or on misinformation given by the Company or its Directors, it is also not the case of the Applicant that this company is still carrying business, why now the Application says is since market conditions are favourable, it wants to restore the company, which is not permissible u/s 252 (3) for it was not inadvertently or on incorrect information struck off. It is also not the case the company still carrying its business.*

3. *The Counsel appearing on behalf of the Applicant has relied upon an Order Dt: 19.04.2017, between PKD Securities Ltd., Vs. Registrar of Companies, Shillong, passed by the Guwahati Bench, NCLT stating that since the aforesaid Bench has passed an Order under the same Section of law, this Company Petition is also to be allowed on the analogy applied in the aforesaid case.*

4. On perusal of the Order passed by our leased brother at Guwahati, it is noticed that the company had been still carrying business, but whereas, in the present case, since Applicant itself saying that the company was closed due to recession, the order passed by the Guwahati Bench is not applicable to the present case.

5. Therefore, for the reasons stated above, this Application is hereby dismissed as misconceived.

(emphasis supplied)

In the matter of Eye Communications Private Limited Vs. The Registrar of Companies, Hyderabad, CP No.14/252/HDB/2021, before the Hon'ble National Company Law Tribunal, Hyderabad Bench:

The Hyderabad Bench of the Hon'ble NCLT, in the above said matter, had also taken a similar view that of the Mumbai Bench in Mahabharat Builders (supra) that the Company struck-off voluntarily can be restored. Relevant part of the judgement is reproduced below:

9. It is seen from the record that the Company was struck off voluntarily in 20.11.2017 under Section 560 (5) of the Companies Act, 1956, by the approval of the members of the Company, duly resolved by its Board and not by the Registrar of Companies for any non-compliances as mandated under the Law. Such being the case, this Tribunal is not empowered under Section 252 of the Companies Act, 2013, to direct for the restoration of the name of the Company."

Emphasis supplied.

From the judgements rejecting the applications, it is clearly evident that the Hon'ble NCLTs are not considering the justification provided by the Companies for revival of the Company, but are only taking note that the Company, had voluntarily made application for striking off, thereby, NCLT is has no power under Section 252(3) to revive the said Company. The justification given by the Companies at the time of revival that the Applicant intends to **"revive the Company, and undertake the business in the name of the Company"** itself is sufficient ground to be considered as **'just and equitable'** and the name of the Company ought to have been restored but the Hon'ble NCLT by virtue of the powers conferred under Section 252(3) of Companies Act.