NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT – II
CHENNAI

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL, CHENNAI BENCH, HELD ON 03.11.2026 AT 10.30 A.M. THROUGH VIDEO CONFERENCING:

CORAM: SHRI. JYOTI KUMAR TRIPATHI, HON'BLE MEMBER (JUDICIAL)
SHRI. RAVICHANDRAN RAMASAMY, HON'BLE MEMBER (TECHNICAL)

APPLICATION NUMBER : --

PETITION NUMBER : CP(CA)/42/CHE/2024

NAME OF THE PETITIONER : N Mohanraj

NAME OF THE RESPONDENT(S) : Atlantic Granites Pvt Ltd & 5 Ors

UNDER SECTION : Sec 213(b) of CA, 2013

ORDER

Present: Ld. Counsel Mr. Manoj Gopalakrishnan for the Petitioner.

Vide separate order pronounced in open court, **CP(CA)/42/CHE/2024** is Dismissed.

Sd/-
RAVICHANDRAN RAMASAMY
Member (Technical)

Sd/-
JYOTI KUMAR TRIPATHI
Member (Judicial)

kg

IN THE NATIONAL COMPANY LAW TRIBUNAL, DIVISION BENCH – II, CHENNAI

CP/CA/42/CHE/2024

(Filed under Section 213(B) of Companies Act, 2013)

N. Mohanraj,
43, Sai Abiram Nagar,
Amala School Road,
Gobichettipalayam – 638 452.

…Applicant

Vs.

1. M/s Atlantic Granites Private Limited,
   (CIN) U14102TN2004PTC054194,
   A-3, BHEEMSENA,
   NO.6, Murrays Gate Road, Alwarpet,
   Chennai – 600 018.

2. Mr. M.P.Balakrishnan,
   A-3 Bheemaseena Apartments,
   N0-6 Murrays Gate Road,
   Alwarpet, Chennai - 600018.

3. Mrs. B. Chira Devi,
   A-3 Bheemaseena Apartments,
   N0-6 Murrays Gate Road,
   Alwarpet Chennai – 600 018.

4. Mr. K.C. Selvaraj,
   Door No.156A, Kullampalayam Kasba
   Kullampalayam Village,
   Gobichettipalayam,
   Erode District.

5. Mr. Vignesh M.B.
   Door No.781-E2, Manickampalayam Kasba,
   Kuruchi Village,
   Bhavani, Erode District.

6. Mrs.Divya M.B.
   Door No.51, Krisghnaswamy Nagar,
   Ramanthapuram,
   Coimbatore – 641 045 *…Respondents*

Order Pronounced on 3rd November 2026

CORAM:

Shri. JYOTI KUMAR TRIPATHI, MEMBER (JUDICIAL)
Shri. RAVICHANDRAN RAMASAMY, MEMBER (TECHNICAL)

Present:

For Petitioner : M/s. Ramani and shankar Advocates, Mr. R. vidhyashankar, Mr. Pranav V. Shankar,
For Respondents: Mr. I. Dinesh and Mr. A. Satyaseelan Advocates

ORDER
(Physical Hearing)

This application has been filed by N. Mohanraj, under Section 213(b) of Companies Act 2013, seeking the following reliefs,

a) *Direct an investigation into the management of the affairs of the 1st Respondent including in the matter of sale of properties of the 1st Respondent Company and into the extent of fraud perpetrated by Respondents 2 and 3 in collusion with the other Respondents.*
b) *Pass such further or other orders as it may be just and necessary in the circumstances of the case and render justice.*

FACTS OF THE CASE

1. This is an application filed by the Petitioner under Section 213(b) of the Companies Act 2013, seeking an order of investigation by this tribunal on the affairs of the Respondent M/s. Atlantic Granites Private Limited (hereinafter referred to as the Company).
2. It is stated that the company was incorporated on 10/09/2004 by Mrs. B. Chitradevi (Petitioner's sister), Mr.M.P.Balakrishnan (Petitioner's brother in law) and Petitioner as Promoters. The Company is classified as a non-government company and was promoted to engage in

the activities of buying, importing, mining, quarrying, processing, selling, exporting or otherwise dealing in granite, marble and other stones.

3. It is submitted that the name of the Company was struck off from the Register of Companies and dissolved by proceedings of the ROC dated 05.07.2017. The grievance of the Petitioner is that the 1st and 2nd Respondents abused their position as Promoters/directors of the Respondent Company and had caused the property of the Company to be sold to their own children (the 5th and 6th Respondents herein) and one other person namely Mr. K.C.Selvaraj (4th Respondent herein) in 2019, after the name of the Company was struck off from the Register of Companies, without reviving the Company.
4. It is submitted that the settled position of law that the properties of a company that has been struck off from the Register of Companies, unless revived, vests in the government, It is submitted that the property is grossly undervalued for the purpose of sale and IT Returns have also not been filed conveniently. Petitioner, IT Department and all Stake Holders have been defrauded by those in management of the Company.
5. It is submitted that present Company Petition is under Section 213(b) of the Companies Act, 2013 which does not prescribe any qualifying threshold as a member or creditor for filing the present petition, It is stated that the Petition is filed based on grounds under Section 213(b)(i) to (iii) of

Companies Act, 2013 in the present case. Hence the Petitioners are qualified to maintain the present Petition.

6. It is submitted that in furtherance of the main objects the Company had purchased a property vide Sale Deed dated 14.09.2004 and registered as Document No.822/2004 in the Office of Sub-Registrar at Gobichettipalayam, Erode District. The purchase of the property was for a sale consideration of Rs.4,96,500/- and the money paid by the Petitioner towards share capital was utilised for purchase of this property.

7. It is submitted that The Company never commenced any business, the other two Promoters (2nd and 3rd Respondents) took on the responsibility of completing the requisite statutory compliances related to the Company and also held out to Petitioner that they would safeguard the property of the Company. However, owing to non-filing of Annual Returns with the Registrar of Companies (ROC), notification was issued under Form STK-7. The same being a Notice for striking off and dissolution of the Company, the Company was struck off from the Register of Companies and dissolved by proceedings of the ROC dated 05.07.2017.

8. It is submitted that with ulterior motive, the Financial Statements and Annual Returns of the 1st Respondent Company have not been filed at all for several years. It is submitted that 2nd and 3rd Respondents, behind the back of the Petitioner, caused a portion of the Company property to

be sold to their son Mr. Vignesh M.B. (5th Respondent), daughter Mrs. Divya M.B. (6th Respondent) and one Mr. K.C. Selvaraj (4th Respondent) (Who is also one of the First Directors of the Company) vide Sale Deeds dated 22.01.2019 and registered as document numbers 171, 172 and 170 of 2019, respectively.

9. It is submitted that the total sale value of all the three sale transactions sum up to Rs. 19,63,500 (Rupees Nineteen Lakhs Sixty Three Thousand and Five Hundred) It is submitted that though the Petitioner was one of the First Directors of the Company in accordance with Article of Association of the Company, a review of the DIN records as available in the MCA portal, shows that the Petitioner's name is not duly reflected as Director of the Company.

10. It is submitted that the two Promoters have concealed the fact of Strike Off before the Sub-Registrar office at Gobichettipalayam, Erode District to cause the registration of sale with intent to deceive and to gain undue advantage by effecting sale of the Company's property, without accounting for the same to the Company and its stakeholders.

11. It is submitted that the market value of the property that has been sold is not less than Rs. 8 crores. It is therefore apparent that deliberately and in a fraudulent manner the property has been grossly undervalued and sold. The intent of such undervaluation is to deprive the State Government

of appropriate Stamp Duty payable on the Sale of the property.

12. It is submitted that the sale of the property of the Company would also attract Capital gains tax in the hands of the Company at 20%. By not even filing the Income Tax Returns and by also suppressing the value of the property sold, no tax has been remitted to the Government on the transaction. It is submitted that this Tribunal has power to order investigation under section 213(b) of Companies Act 2013, if it is satisfied that circumstances suggest that in management of the affairs of the Company, a fraud has been played. It is not confined to a Company which is currently in the Register of Companies with the ROC. Section 248(7) of the Companies Act is emphatic that Directors and Officers of the Company are not absolved of any obligation merely by reason of Striking off.

13. It is further submitted that this Tribunal and NCLAT have held that an investigation can be ordered under Section 213 of the Companies Act, even in respect of a Company in liquidation since the intent is to unearth fraud at the time of formation or in the management of the Company. Therefore, after forming a Company and perpetrating a fraud, it is not open to those in management to conveniently escape the clutches of law by applying for a 'Strike Off or by allowing the Company to be 'Struck off'.

14. It is submitted that in the forgoing context, the Petitioner had addressed a Legal Notice 21.2.2022 to the 2nd

Respondent. The 2nd Respondent merely sent an interim reply dated 7.3.2022 and never answered the allegation. The Legal Notice dated 21.2.2022 and the Interim Reply dated 7.3.2022 are filed herewith and marked as Exhibit A-13 and Exhibit A-14 respectively. The Petitioner thereafter also made a complaint to the Registrar of Companies dated 28.04.2022 stating that the 1st Respondent Company has sold its property after its name has been struck off from the Register of Companies.

15. It is submitted that Section 213(b)(ii) of the Companies Act, 2013, clearly states that this Tribunal may order an investigation into the affairs of a company if persons concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards the company or towards any of its members. The instant case is a fit case that fulfils the criteria set out under Section 213(b)(ii) to order an investigation into the affairs of the Respondent Company herein.

16. In the counter affidavit filed by the respondent it is submitted that this company petition is not maintainable and ought to be dismissed in limine on the sole ground that the 1st Respondent company is struck off from the rolls of the Registrar of Companies (Roc) Coimbatore and that any such proceeding cannot be initiated against a Company that is struck off by the RoC until it is active since it loses its character of being a juristic person in the eyes of law.

17. It is submitted that the Respondents do not deny the fact that the Petitioner is the brother-in-law of the 2nd Respondent and brother of 3rd Respondent herein while vehemently denies the fact that the Petitioner was instrumental in promoting the 1st Respondent (hereinafter referred as "R1").
18. It is submitted that R1 had received unsecured loans from 4 parties totalling to Rs.9,86,700/- and the same is tabulated as under

Name of the lender	Amount (in Rs.)
K.C.Selvaraj	3,50,000/-
M.P.Balakrishnan	8,500/-
M.P.Balakrishnan HUF	4,28,200/-
N.Mohanraj petitioner	2,00,000/-

19. A sum of Rs.2,00,000/- received from the Petitioner is in the nature of loan and was never infused as capital of the company. It is also a notable fact that there is no increase in the share capital of the company since its inception.
20. It is submitted that the Respondents do not deny the fact that the sale consideration of the property was Rs.4,96,500/- and that the Petitioner had signed the documents representing R1.
21. It is submitted that it is pertinent to note from the documents filed by the Petitioner viz., FORM 20B & FORM 23AC which are the statutory forms filed before the

Registrar of Companies (Roc), Memorandum of Association that the subscribers to the share capital are only R2 & R3 and that R2 & R3 are the only directors since inception.

22. The R1 Company have filed its statutory forms from 2005 till 2011 and the Petitioner having not raised any query till 2022 has only woke up after a conflict between the family members. This is the sole reason for filing this present CP. The Petitioner alleges that he contributed to share capital but the documentary evidence clearly show that there is no increase in share capital at all and that the amount received by the Petitioner is treated as unsecured loan only.

23. It is submitted that a sum of Rs.9,86,700/- being unsecured loans from various parties as stated above was under the possession of R1. Apart from the loan advanced by the Petitioner, the R1 had a sum of Rs.7,86,700/- by which it purchased the property. It is submitted that Sec.213(b)(i) deals with a situation where the Company is active. The words used are "the business of the company is being conducted" which clarifies the fact that this clause triggers only when the company is active. While clause(ii) deals with a situation where concerning the persons who formed the company; Both these clauses attracts a scenario where a fraudulent activity is conducted to oppress any of its members.

24. It is submitted that with regard to (a) That the immovable property had been sold after the company is struck off is concerned, this is only a irregularity and not an illegality

and the right course of action lies in revival of the company alone and (b) That the immovable property is undervalued and sold depriving the stamp duty payable to the State Governmen is concerned, there being no proceedings under Section 47A of the Indian Stamp Act and the SRO having accepted the valuation of property, the claim of the Petitioner is misleading. On both these instances, invocation of Sec.213(b) is unwarranted and uncalled for.

25. In the written submission filed on behalf of the respondent it is stated that The R1 was struck off from the Rolls of RoC on 05.07.2017 and such strike off amounts to dissolution of R1 as statutorily contemplated u/s.248(5) of the Act. The fact that neither the Petitioner nor the Respondents took any steps to restore the R1 is on account of there being no business prospects for R1. Even the Petitioner who now claims to be a Promoter/Director claiming an interest in functioning of R1 has not bothered to take any steps to restore the name of R1. Thus, for statutory purposes, R1 as on date of filing of the above CP is not a corporate entity recognizable under any of provisions of the Act.

26. It is submitted that the saving provision in Sec.248(8) would come into picture only in regard to liability of the Company, if any. It may be seen that u/s.248*7), the statute, is not providing the liability on the company as such, since the R1 is dissolved and the liability is only fastened only on

the directors/managers of the dissolved company, that too limited to the extent of enforcing the liability.

27. It is further submitted that sec.250 provides that once a company stand dissolved u/s.248, it shall on and from the notice u/s.248(5) ceases to operate as a company and certificate of incorporation issue shall be deemed to have been cancelled from such date except for purpose of realizing the amount due to company and for discharge of the liability or obligation of the company.

28. It is further submitted that a plain reading of Sec.213(b) would show that to invoke the said provision, this Tribunal has to be satisfied that the business of the company which is being presently conducted, suggest the circumstances contemplated in sub-clauses (i) to (iii) warranting a direction for investigation. The Petitioner has not provided any detail on record to show that R1 is presently conducting business activity and has also not pleaded any circumstances suggesting the company carrying on its business with an intention to default its creditors, members or any other person and he has also not pleaded anything regarding any misfeasance or misconduct towards the company or towards its members by the person concerned in the management of the affairs of the company and also has not pleaded anything relating to the company providing any information with respect to its affairs.

29. The Petitioner is that a property purchased in the name of R1 had been sold by under valuing its market value. In this

regard, it would be a matter for the Registration Department to take note The Petitioner has also not shown any material, that the money he contributed was also utilized by the Company in purchasing the said property to claim any interest in the said property. If at all the Petitioner is concerned, it can only be to the extent of the amount he contributed as unsecured loan, which at the best, would be a liability of the Company, which liability, as contemplated u/s.248(7) can be enforced only against the directors and the managers of the dissolved company.

30. It is submitted that from the financials of the R1, that the said contribution by the Petitioner was treated as "unsecured loans" since day 1 and till the date of strike off or the latest financial statements filed by the R1 for the FY 2011-12. It is an undisputed fact that any amount that is contributed after the date of incorporation, for which no share application allotment form is being filed cannot partake the character of contribution made towards the share capital.

31. It is submitted that one Mr. K.S. Prabhakaran wanted to acquire shares and infused a sum of Rs.2,50,000/- via 3 different Demand Drafts all dated 28.10.2004 which is reflected as "share application pending allotment" as on 31.03.2005 No shares were allotted to the said person and the same was returned to him via 28.04.2005.

32. It is submitted that the Petitioner signed in the capacity of a director to purchase the property. This averment in the

Petition is false to the extent that the contribution of the Petitioner was utilized. It can be seen that the total unsecured loan as per the financials is Rs.9,86,700/-. The averment is a mere assumption that the contribution of the Petitioner was utilized. This is false, baseless and is without any proof. The financials prove that the unsecured loan is twice the amount of Sale consideration.

33. It is submitted that Sec.213 deals with 2 different scenarios. Firstly, clause(a) provides a way to conduct investigation by the shareholders holding not less than 1/10th share. Secondly, clause (b) is a carve out to clause(a) which gives a way for any other person, who does not fall under clause (a) but has some substantial right over the company to conduct investigation. The use of the word "any other person" in clause (b) refers to any other person who has substantial interest over the affairs of the Company. Clause (b) has 3 sub-clauses. The Petitioner failed miserably to prove under which sub-clause this impugned Petition is being filed.

34. It is submitted that clause (b) provides 3 scenarios to deal with. Sub-clause(i) deals with a scenario where the business is being conducted. Therefore, the pre-requisite condition to file under sub-clause (i) is that the business should be alive and is being conducted. In the instant case, R1 is struck off. Therefore, this sub-clause (i) is not applicable.

35. While Sub-clause (2) deals with a situation where it should be proved beyond that the persons concerned in the

formation of company or management of affairs is found guilty of fraud etc the usage of the word "any other person" has to be read with the clause (a) because Sec.213 contemplates of 2 different scenarios alone. One is when the investigation is being initiated by the Shareholders who has substantial interest of not less than 1/10th and the clause (b) is in the context of shareholders who has less than 1/10th shareholding or any other person who has substantial interest in the company. This is for the sole reason that persons holding shares of less than 1/10th cannot file an Oppression & mismanagement Petition u/s.241. Therefore, this provision gives way to seek investigation into the affairs provided they satisfy the ingredients.

36. In the written submission filed by the petitioner it is submitted with regard to the investigation can be ordered against a struck off company Section 248(7) of the Companies Act, 2013 states that the liability, if any, of every Director, Manager or other officer who was exercising any power of management, and of every member of the Company dissolved under sub-section (5), shall continue and may be enforced as if the company had not been dissolved. Thus, the statutory fiction expressly preserves the liability of persons in charge and expressly enables enforcement "as if the company had not been dissolved". This necessarily includes the power to investigate their conduct and the affairs of the company.

37. With regard to the Maintainability of the Petition under Section 213(b) of the Companies Act, 2013 it is submitted that "Any person who is not able to master the strength required for maintaining a company petition under Section 213(a) can maintain a company petition under Section 213(b). It is further held that there is no condition that has been put by the legislature on the power of the court to entertain an application under Section 213(b). But notwithstanding such situation, the court may in its wisdom expect prima facie proof." Thus, Section 213(b) is designed as a flexible and enabling provision, to be invoked where detailed investigation is warranted but the stringent numerical thresholds under Section 213(a) cannot be met. The focus is on the existence of credible material suggesting fraud, misfeasance or other misconduct, rather than on the status or number of the application.

FINDINGS OF THIS TRIBUNAL

38. Heard the learned counsel appearing for the Petitioner and the Respondents, and perused the pleadings, documents and written submissions placed on record.
39. The present Company Petition has been filed under Section 213(b) of the Companies Act, 2013 ("the Act"), seeking an order of investigation into the affairs of the 1st Respondent, M/s. Atlantic Granites Private Limited ("the Company").
40. The Company was incorporated on 10.09.2004. Its name was struck off from the Register of Companies by the Registrar of Companies, Coimbatore dated 05.07.2017. The

grievance of the Petitioner is that the 2nd and 3rd Respondents, being the Promoters/Directors of the Company abused their position and caused the immovable property of the Company to be sold in 2019 to their own children (the 5th and 6th Respondents) and to one Mr. K.C. Selvaraj (the 4th Respondent), after the name of the Company had been struck off and without reviving it. The Petitioner alleges that the property was grossly undervalued, to the detriment of the Company.

41. The Respondents oppose the Petition on the following grounds. The Petitioner has no standing to maintain the Petition. The Company, having been struck off and dissolved has lost its juristic character and cannot be the subject of an investigation. Section 213(b)(i) applies only where the business of the company "is being conducted".

42. In view of the rival contentions, the points that arise for consideration are:

(1) Whether the Petitioner has locus standi to maintain an application under Section 213(b) of the Act

(2) Whether an investigation can be ordered into the affairs of a company whose name has been struck off from the Register of Companies . If Affirmative

(3) Whether the Petitioner has made out circumstances falling within Section 213(b) of the Act so as to warrant an order of investigation.

With regard to whether the Petitioner has locus standi to maintain an application under Section 213(b) of the Act

43. Section 213(b) of the Act empowers this Tribunal, on an application made to it by "any other person or otherwise" to order an investigation into the affairs of a company if it is satisfied that there are circumstances suggesting that (i) the business of the company is being conducted with intent to defraud its creditors members or any other person, or for a fraudulent or unlawful purpose, or in a manner oppressive to any of its members, or that the company was formed for any fraudulent or unlawful purpose (ii) persons concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud misfeasance or other misconduct towards the company or towards any of its members or (iii) the members of the company have not been given all the information with respect to its affairs which they might reasonably expect.

44. Clause (a) of Section 213 confers the right to apply on members holding the prescribed minimum shareholding Clause (b) on the other hand employs the expression "any other person" and prescribes no qualification as to membership shareholding or creditor status. Therefore we are of the considered view that, the use of this expression reflects a deliberate legislative intent to confer standing on a wider class of persons so that an inquiry into the affairs of a company. In view of the above this Tribunal holds that the Petitioner has locus standi to maintain an application under Section 213(b) of the Act.

With regard to whether an investigation can be ordered against a struck-off company

45. The main contention of the Respondents is that upon strike-off under Section 248 of the Act the Company ceased to exist and no investigation can be ordered into its affairs. They rely upon the words "the business of the company is being conducted" in Section 213(b)(i) to contend that the provision is attracted only where the company is active. The Petitioner per contra contends that the liability of those in management survives the dissolution by virtue of Section 248(7) of the Act.

46. Section 248(5) of the Act provides that on publication of the notice of strike-off in the Official Gazette the company shall stand dissolved. Section 248(7) however provides that the liability if any of every director manager or other officer who was exercising any power of management and of every member of the company dissolved under sub-section (5) shall continue and may be enforced as if the company had not been dissolved. Thus by a statutory fiction the Legislature has preserved the liability of the persons in charge of the affairs of the company and has expressly enabled its enforcement "as if the company had not been dissolved".

47. Further Section 252 of the Act provides a statutory remedy for restoration of the name of a company struck off from the Register which indicates that strike-off is not an absolute and irreversible extinction of the company. Reading Sections 248(7) and 252 together this Tribunal is of the considered view that proceedings concerning the affairs of a struck-off company and the liability or

misconduct of those who were in charge of its management are maintainable and that the Company may, for such limited purpose, be treated as if it had not been dissolved.

With regard to whether the circumstances contemplated under Section 213(b) are made out

51. To order investigation under Section 213 this Tribunal must therefore be satisfied on the material placed before it that there are circumstances suggesting the existence of any one of the situations contemplated in sub-clauses (i) to (iii) of Section 213(b) As regards sub-clause (i) it contemplates a situation where the business of the company is being conducted with intent to defraud or for a fraudulent or unlawful purpose, or where the company was formed for such a purpose. The case of the Petitioner himself is that the Company never commenced any business and that it was struck off on account of non-filing of annual returns. No material has been placed to show that the Company was carrying on any business with intent to defraud its creditors, members or any other person, nor is there any pleading or material that the Company was formed for a fraudulent or unlawful purpose. Sub-clause (i) is therefore not attracted.
52. As regards sub-clause (iii), it concerns the failure to furnish to the members the information with respect to the affairs of the Company which they might reasonably expect the petitioner has not brought on record any details to warrant the same against the respondent. In sub-clause (ii) The core allegation is that the 2nd and 3rd Respondents caused a portion of the Company's property to be sold in 2019 for an inadequate consideration of Rs.

19,63,500/-, whereas the market value was not less than Rs. 8 crores, and that the fact of strike-off was concealed from the Sub-Registrar. The sale of the Company's property after the name of the Company was struck off however is an irregularity It does not by itself amount to fraud misfeasance or other misconduct towards the Company or its members within the meaning of Section 213(b)(ii), therefore this tribunal is of the considered opinion that the contention raised by the applicant doesn't warrant to order investigation against the company.

53. In the light of the above discussion this Tribunal is of the considered view that the material placed by the Petitioner does not prima facie constitute circumstances suggesting that the persons concerned in the formation or management of the Company have been guilty of fraud misfeasance or other misconduct towards the Company or its members. Therefore This Tribunal is not satisfied that the threshold under Section 213(b) of the Act is met to exercise the extraordinary power of ordering an investigation against the company. With regard to sale of property after the company has been struck off it is for the ROC to consider.

54. In view of the above mentioned reasons and contention CP(CA)/42(CHE)/2024 is Dismissed, no order as to costs.

-SD- -SD-

RAVICHANDRAN RAMASAMY **JYOTI KUMAR TRIPATHI**
MEMBER (TECHNICAL) MEMBER (JUDICIAL)

Rannika/LRA