

**THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
AT NEW DELHI**

C.P. No. 189/252/ND/2017

Under Section 252 Sub-Section (3) to the Companies Act, 2013

In the matter of:

M/s Aastha Alumina Private Limited Petitioner

Versus

Registrar of Companies NCT of Delhi and HaryanaRespondent

CORAM:

MS. INA MALHOTRA, MEMBER (JUDICIAL)

MR. S.K. MOHAPATRA, MEMBER (TECHNICAL)

For the Applicant/ Petitioner : Subhash Chander Bhaskar, CA
For the ROC NCT of Delhi & Haryana : Mr. Manish Raj, Company Prosecutor
For the Income Tax Department : Ms. Lakshmi Gurung, Standing Counsel



Judgment delivered on: 12.01.2018

Per: S. K. Mohapatra, Member

ORDER

1. One of the directors of M/s Aastha Alumina Private Limited has filed the present appeal under Section 252 (3) of the Companies Act, 2013 seeking restoration of the name of the petitioner company which has been struck off by the Registrar of Companies, NCT of Delhi and Haryana.
2. M/s Aastha Alumina Private Limited was incorporated on 07.11.2008 having its registered office, H. No. 310 Block C-2, Shivraj Colony, Ayanagar Extension, New Delhi-110047 within the jurisdiction of this Tribunal.
3. It is the case of petitioner that the name of the Appellant Company was struck off from the Registrar of Companies under Section 248 of the Companies Act, 2013, by a suo moto action of the Respondent, after issuing the notification under Section 248(5) in the Official Gazette dated 09.09.2017. The aforesaid action was taken on account of failure of the Petitioner Company to file its statutory returns and other documents since the financial year ending 31.03.2014, giving rise to the reasonable belief that the company was not operational.

4. The petitioner has submitted that without any mala fide motive the company had failed to file the Annual Return and financial statement for the financial year ended 31st March, 2014, 31st March, 2015 and 31st March, 2016 with the office of the concerned Registrar of Companies in compliance of the provisions of sub-section 4 of the Section 92 and sub-section 1 of Section 137 of the Companies Act, 2013.
5. It is further submitted the petitioner has admitted their default that they did not file the annual Accounts and Returns for the financial year ending 31st March 2014, 31st March 2015 and 31st march 2016. However, it is stated that the company has prepared the annual accounts for the aforesaid years and the same has been audited by the statutory auditor of the company. Copies of audited financial statements for the said financial years ending on 31.03.2014, 31.03.2015 & 31.03.2016 have been placed on record.
6. The petitioner company has also submitted that the Petitioner Company has been regularly filing the necessary Income Tax Returns with the Income Tax Department from time to time. Copy of acknowledgement receipts of Income Tax Returns for the Assessment year, 2012-2013 to 2016-2017 have been placed on record. Additionally, in order to show the regular working and transactions the petitioner has also submitted bank account statements of three bank accounts of the company.

7. It is accordingly submitted that from the regular filing of Income Tax Returns and from the transactions shown in the various bank statements, it is manifestly established that the petitioner company has been in operation and therefore it could be said that the petitioner company is not a defunct or non-operational or dormant company within the meaning of Section 252 of the Companies Act, 2013.
8. The Registrar of Companies has filed its response and submitted that the name of the company was struck off in pursuance of direction issued by the Ministry of Corporate Affairs vide its Office memorandum, No. 3/53/2017. CL.II dated 07.02.2017. It is further stated that due steps had been taken in accordance with the statutory provisions under Section 248 (1) 248 (4) of the Companies Act, 2013 before striking off the name of the petitioner company from their register. It is further stated in the report that the action was initiated as the Petitioner Company did not file the Balance Sheet and Annual Returns since financial year ending on 31.03.2014, which gave rise to the reasonable presumption that the petitioner company was not in operation.
9. The Respondent Registrar of Companies in its report has stated that it has no objection if the name of the company is restored in the Register of Companies on the undertaking that the company will file its pending Annual Returns and Balance Sheets since financial year ended on 31.03.2014 till date along with the requisite late filing fee as prescribed under the law.

10. Ld. Standing counsel on behalf of the Income Tax department has filed its representation in which it has been submitted that the company is regularly filing its returns since assessment year 2011-12 to 2016-17 and there is no outstanding income tax dues pending against the company.
11. The provision pertaining to restoration of the name of the company has been provided in Section 252 of the Companies Act, 2013 which envisages that:-

“Appeal to Tribunal

252. (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:.....

*(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.” (emphasis given)

12. A perusal of the aforesaid provisions shows that any person aggrieved by the order of the Registrar, notifying a company as dissolved under Section 248 is competent to file an appeal to the National Company Law Tribunal. If a company or any member or creditor feels aggrieved, they would also be competent to file an appeal against the order of the ROC before the expiry of twenty years from the date of publication of order in the official gazette. Sub section 3 of Section 252 contemplates that one of the three conditions are required to be satisfied before exercising jurisdiction to restore company to its original name on the register of the ROC namely:

A) That the company at the time of its name was struck off was carrying on business.

B) or it was in operation

C) or it is otherwise just that the name of the company be restored on the register.

13. When we apply the aforesaid principles to the facts of the present case it is seen that the company was regularly filing its income tax returns and it is also seen from the bank statements of the company that it was carrying on business at the time when its name was struck off from the register of companies. The company has also placed on record its audited Balance sheets and accounts for the financial year ending 31.03.2014, 31.03.2015, and 31.03.2016. It is accordingly evidently clear that the company was in operation at the time of struck off.
14. It is pertinent to refer here the case of Vats Association Pvt. Ltd. Vs. ROC reported in (2010) 102SCL 397 (Del), where at the time of striking off the company was flourishing but accounts could not be filed due to secretary's negligence, restoration was ordered.
15. The facts of the case are also similar to the law laid down in the matter of Purushottam dass and Anr. (Bulakidas Mohta Co. P. Ltd.) V. Registrar of Companies, Maharashtra, &Ors., (1986) 60 Comp Cos 154 (Bom), wherein the Hon'ble Bombay High Court has held that:

"The object of Section 560(6) of the Companies Act is to give a chance to the company, its members and creditors to revive the company which has been struck off by the Registrar of Companies, within period of 20 years, and give them an opportunity of carrying on the business only after the company judge is satisfied that such restoration is necessary in the interest of justice"

16. It can be seen from the documents available on record that the company was carrying on its business and was operative at the time of its name struck off from the register. The assumption of Registrar of Companies that the company was not in operation was clearly erroneous. Besides it is seen that the appeal has been filed within the stipulated period prescribed under Section 252 of the Act. Needless to say that Income Tax Department and ROC have given no specific objection against the restoration of the Company subject to filing of annual returns with fees as prescribed. Besides there is nobody to be prejudiced by the restoration of the name of the Company. On the contrary the restoration is clearly in the interest of the company. Even if the management of the company entrusted with the responsibility of filing of statutory returns had failed to do so, yet since the company is a running company and the application has been filed in time, the Tribunal clearly has the power to restore the name of the company. The lapses for non-filing of annual returns in time can be countered by imposing cost. In this factual background and in the interest of justice the appeal filed by the petitioner deserves to be allowed subject to payment of cost.

17. Accordingly, the petition is allowed. The restoration of the petitioner company's name to the Register will be subject to the petitioner company filing all outstanding documents required by law and completion of all formalities, including payment of any late fee or any other charges which are

leviable by the respondent for the late filing of statutory returns and also on payment of cost of Rs. **25,000/-** to be paid to the Prime Minister Relief Fund. The name of the petitioner company shall then, as a consequence, stand restored to the Register of the Registrar of Companies, as if the name of the company had not been struck off in accordance with Section 248(5) of the Companies Act, 2013.

18. Liberty is granted to the respondent to proceed with penal action against the petitioner, if so advised, on account of the company's alleged default in compliance with any provisions of the Companies Act, 2013.
19. The petition is disposed of accordingly.

Let the copy of the order be served to the parties.



(S. K. Mohapatra)
Member Technical



(Ina Malhotra)
Member Judicial