

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

Company Petition No. 98/(ND)/2017

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

In the matter of:

M/s Prudent Fire Services Private Limited

.....Applicant

Judgment delivered on: 11/10/2017

CORAM:

MS. INA MALHOTRA, MEMBER (JUDICIAL)

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

For The Applicant/ Petitioner : None

For The ROC NCT of Delhi &
Haryana : Mr. Manish Raj, Company Prosecutor

ORDER

1. The two directors of M/s Prudent Fire Services Private Limited have filed the present appeal under Section 252(3) of the Companies Act, 2013 with a prayer for issuance of directions to the ROC to restore the name of the aforesaid company as originally existed in its register and to continue its name on the register of Companies.
2. Facts in brief of the present appeal is that the company M/s Prudent Fire Services Private Limited had applied for striking off its name by filing an application dated 29.01.2011 under Easy Exit Scheme, 2011 duly supported by affidavit and indemnity bond from the directors as per provisions of Section 560 of the Companies Act, 1956 read with the Easy Exit Scheme. Accordingly, the name of the company was struck off from the register of Registrar of Companies of NCT of Delhi and Haryana on 25.03.2011 and published in the official Gazette on 04.06.2011.
3. It is the case of the applicant that the company was inoperative for the past 6 years because the company was not able to sustain with prevailing competition in the market and due to continuous accumulation of losses the management was not able to carry on business. Therefore, the company had applied for easy exit scheme.



4. It has been submitted that the Directors/shareholders now want to revive the company in order to do the same business and if so required, for this purpose would introduce new directors/investors to cope up with the market demands. It is also stated that the company may be able to sustain with the experience of new directors in the competitive business environment.
5. The ROC in its reply dated 18.08.2017 submitted that as per the records, the company has filed its last financial statement for the financial year ended on 31.03.2003. It has been stated that as the company had itself applied for Easy Exit Scheme, the company may be asked to explain how it is aggrieved of its own act and be put to strict proof to establish the same.
6. Reliance have been placed of the order dated 18.07.2017 passed by Hon'ble NCLAT in matter of Rahul Rice Mills Versus Registrar of Companies, C.P. No. 171 of 2016, in which it has been held that *"merely because the directors are now in a position to infuse funds would not constitute a sufficient ground for us to accept prayer for restoration of the name of the company on the register of the ROC. It is not the discretion of the erstwhile directors of company to get the company struck off or revive the company at any time they like especially when they have exercised the discretion for getting its name struck off under the Fast Track Exit Scheme-2011."*



7. In the aforesaid judgement Hon'ble NCLAT has held that merely on the ground that the directors of the erstwhile company are now able to infuse funds the company cannot be revived when the name of the company has been struck off under the easy exit scheme, 2011.
8. The applicant has placed reliance of two judgements one passed by the Ahmedabad Bench of NCLT in Co. Appeal No. 12/252(3)/NCLT/AHM/2017 and other passed by Hon'ble High Court of Gujarat at Ahmedabad in Company Petition No. 36 of 2008 in which the appeal has been allowed and the company was revived although the name was struck off under the easy exit Scheme. The facts of the cases relied upon may not be applicable to the present case as in those cases objection were not raised by the concerned ROC nor the grounds projected for revival were same. In the present case ROC has raised strong objections inter-alia on the grounds that the company itself has prayed for exit and that the company was not operative and has not even filed its annual returns since 2003.
9. The provision concerning restoration of the name of the company has been incorporated in section 252 of the Companies Act, 2013 which is pari materia to section 560 of the 1956 Act and the same read as under:- **“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:

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*(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."*

10. 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.

11. When we apply the aforesaid principles to the facts of the present case the applicant has itself admitted that the company was inoperative for the past 6 years from the date of application under easy exit because the company was not able to sustain with prevailing competition in the market and due to continuous accumulation of losses the management was not able to carry on business. It is also seen that the applicant has filed its last financial statements long before in the year ending 31.03.2003 and no reasonable convincing ground has been placed on record upon which the prayer of the appeal can be granted to the applicant.
12. There is no dispute that the shareholders and the directors of the struck off company themselves voluntarily took steps to seek exit of the company under Easy Exit Scheme, 2011. When they themselves apply for exit, there cannot be any grievance in the impugned striking off of

the name of the company. It is also an admitted fact that no statutory reports had been filed by the company for a long period since 2003. It is also pertinent to note that though the company was struck off long before in 2011 under suo-moto exit scheme, the present application has been filed belatedly in 2017. The reason for striking off the name of the applicant company was that the company was not able to sustain in market at that time. The name of the petitioner company has been struck off by duly following the procedure laid down under Section 560 of the Companies Act, 1956.

13. It is pertinent to mention here the findings of the Hon'ble Calcutta High Court in the case of Viswanath Agarwal vs. Rao, West Bengal reported in [2017] 136 CLA 81 (Cal.) which envisages that :-

"Since it was the Company which had applied to have the name struck off under the relevant scheme, the Company could not have applied u/s.560 (6) of the Act unless such application was made within a short time of its name being struck off and on obvious mistake on the part of the Company to apply under the scheme was demonstrated. Though the Company seeks to assert that the word 'Company' in Sec. 560(6) of the Act has to be given a wider meaning, it is not possible to accept that a Company whose name had been struck off on its invitation six or seven years back would


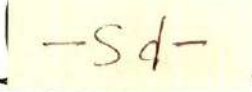


be permitted to apply under such provision for the striking off to be undone."

14. In the present case also though the applicant suo-moto had prayed for striking off the name of the Company through easy exit scheme long before in 2011, they have approached for its revival after nearly six years from the date of striking off the name of the company. There cannot also be any grievance when the name of the company was struck off at their own request. Moreover, we do not find any good reason for revival of the company, more so, when the same company was struck off at their own request. The power of the Tribunal to restore a Company to the register is a discretionary power which it will exercise for a substantial reason and not as a ritual or a ceremony.
15. As a sequel to the above discussion this petition fails and the same is dismissed.



(S. K. Mohapatra)
Member Technical



(Ina Malhotra)
Member Judicial

KARAM CHAND