

IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH

CA 149/ALD/2017
(Under Section 252 (3)
of the Companies Act, 2013

IN THE MATTER OF

M/S Dalimss Sunbeam Educomp Limited
Having its Regd. Office at B38/8-6 A,
Raghunath Nagar, Mehmoorganj,
Varanasi- 221010

.....Applicant

Versus

Registrar of Companies U.P and Uttarakhand, Kanpur

.....Respondent

Judgement/ Order delivered on 01.03.2018

Coram : **Shri V.P. Singh, Member (Judicial)**

For the Operational Creditor : **Shri Anil Kumar, PCS**

For the Respondent : **Shri Krishna Dev Vyas, CGSC**

As per : **Shri V.P. Singh, Member Judicial**

ORDER

1. This appeal has been filed under Section 252(3) of the Companies Act, 2013 (hereinafter as Act) by "M/s Dalimss Sunbeam Educomp Limited" (hereinafter referred as Applicant Company) praying for restoring its name in the Register maintained by the Registrar of Companies, Kanpur (hereinafter cited as ROC), which has been struck off from the Rolls of the ROC by Order No.ROC/STK- 7/2570 dated 03rd July, 2017 and published and notified in Official Gazette of India on 15th July, 2017.

2. The Brief facts of the case are stated as under:

I. The Applicant Company was incorporated with ROC, Kanpur on 7th September, 2011 under the provision of Companies Act 1956, having



Rs.5,00,000/- (Five lac Rupees) of authorised capital which is divided into Rs.50,000/- (Fifty Thousand) Equity Shares of Rs.10/- each.

- II.** The Applicant-Company is presently managed by one Managing Director, Mr. Pradeep Madhok (DIN: 03608400) and five Directors namely Mr. Ajay Kumar Srivastava (DIN: 01201577), Ms. Alisha Madhok (DIN: 03608412), Mrs. Monica Saraswat (DIN: 03608414), Mrs. Pooja Madhok (DIN:03608600) and Mr. Maahir Madhok (Additional Director, DIN: 07392697).
- 3.** Learned PCS representing Applicant Company submitted that the Applicant-Company has been continuously doing the tasks and objects as per Memorandum of Articles of the Association of the company and there are no statutory dues as on date payable by the company.
- 4.** Further, it stated that the task of filing of Annual Returns, balance sheet as well as other documents, which are required under the Companies Act, has been assigned to one of the executives. However, he left the job and is not in contact with the Company. Due to lack of information and knowledge, the Company could not file the required documents with the ROC.
- 5.** That to corroborate the financial stability and creditworthiness of the company, the company is placing on record the balance sheet for the financial year 2014, 2015, 2016. The copy the balance sheet for the financial year 2014, 2015 and 2016 is being filed, marked as Annexure No.IV to the Application. Further, in August 2017, the balance sheet as on 31st March, 2017 and the Auditor's Report in respect thereof was ready to be filed with the Opposite party. The fact of non-filing of the return and other documents with the opposite party was not known to the Applicant-Company. The Appellant



submits that in the event of revival and restoration of its name, it shall file all outstanding statutory documents, i.e., financial statement and annual returns for the period 2014 to 2017 along with filing fees and additional fees, as applicable on the date of actual filing.

6. Further, it is mentioned in the present Application that the management of the company has put all its best efforts to run the business of the company efficiently and there have been no discrepancies whatsoever.
7. PCS, for the Applicant Company, contended that without any rhyme and reason the impugned order/notification No.ROC/STK-7/2570 dated 03rd July, 2017 has been passed by the respondent (ROC) and the same has also been notified in the official Gazette without following the procedure provided under Section 248 of the Companies Act, 2013.
8. Shri Krishna Dev Vyas, CGSC filed a report given by Registrar of Companies, Kanpur which states that on perusal of records of the aforesaid company on MCA Portal, it was observed *that the Petitioner Company had not filed statutory returns like Balance Sheets and Annual Returns for the last 03 years after the year.* And as such the Registrar had reasonable cause to believe that the petitioner company was not carrying on any business or operation for a period of more than two immediately preceding financial years. Neither any application was made by the company within such period for obtaining the status of a dormant company under Section 455 of the Companies Act, 2013.
9. Further, it is stated that by the provisions of Section 248 of the Act, the respondent sent prescribed Notice dated 03.04.2017 to the company at its registered office address with an endorsement to its directors Sh. Ajay Kumar Srivastava, Pradeep Madhok, Alisha Madhok, Monica Saraswat, Pooja



Madhok and Maahir Madhok by Speed Post at their addresses available in the signatory details of master-data on MCA Portal, pursuant to Section 248(1) of the Companies Act, 2013 read with Rule 3 of the Companies (Removal of names of Companies from the Register of Companies) Rules 2016, intimating about the intention of this office to remove the name of the company from the Register of Companies on the grounds mentioned therein. It was also requested to send representation, if any, within 30 days from the date of receipt of the notice. It was also mentioned that unless cause to the contrary is shown within the prescribed period, the name of the company shall be liable to be removed from the register of companies and the directors of the company shall be liable for appropriate action under the Act. However, neither the company nor its directors have responded to the said notice dated 03.04.2017.

- 10.** Further, pursuant to sub-Section (1) and Sub-section (4) of Section 248 of the Companies Act, 2013 and 2nd proviso to Rule 7(1) of the Companies (Removal of names of Companies from the Register of Companies) Rules 2016, a Public Notice was also published in one English Newspaper "Hindustan Times" and in Hindi Newspaper "Hindustan" circulating in the Uttar Pradesh on 26.04.2017.
- 11.** A Notification No.18 dated 25.04.2017 was also published in Weekly Gazette of India, Part-III, Section-1 dated 6th May to 12th May, 2017 pursuant to sub-Section (1) and Sub-section (4) of Section 248 of the Companies Act, 2013 and 2nd provision to Rule 7(1) of the Companies (Removal of names of Companies from the Register of Companies) Rules 2016, inviting objections from any person to the proposed removal/striking off the name of company from the Register of Companies.



- 12.** That neither any representation was received from the company/its directors nor was any objection received from any person. And accordingly, the company was dissolved, vide Notification No.28 dated 03.07.2017 published on 15-21 July 2017 in Gazette of India, Part-III- Section 1 at Sl. No.2530 (English) under sub-Section (5) of Section 248 of the Companies Act, 2013 and the 2nd proviso to Rule 7(1) of the Companies (Removal of names of Companies from the Register of Companies) Rules 2016.
- 13.** By the perusal of the present application and having heard the PCS for Applicant, I am of the view that the relevant documents which are to be filed, were ready with the company and the company is willing to file the same, if so permitted. Further, Company is a going concern and has Reserves and surplus as reflected in its Audited Balance Sheet.
- 14.** The Company has not undertaken any significant cash transactions during the period of demonetisation, i.e. from 08th November till 30th December 2016, in support of the same Affidavit is also filed before this Tribunal on 08 January 2018. Further, in the Affidavit, it is also mentioned that Applicant Company is not on the list of Defaulting Companies as issued by Ministry of Corporate Affairs.
- 15.** From a perusal of the record, having heard both the parties, it is undisputed that Appellant Company has defaulted in filing Statutory Returns for the period 2014 to 2016 and notice were also served upon them by ROC, Kanpur. Appellant contends that the default in filing return was on account inadvertence of an employee, who was assigned to file statutory Return on behalf of the company, left the job without any intimation. A perusal of the record shows that the Appellant Company has annexed audited Balance sheet for the Year 2014, 2015& 2016, i.e. marked annexure no. IV in the petition.



Revenue from the Operation in the Year 2014 is 3,120,382.00/-, in the year 2015 is 3,160,770.00/-, and in the year 2016 is 7,971, 262.00/- which reflects the Company was ongoing Concern. Appellant Company has also annexed the Income Tax return for the Assessment year 2014- 2015, 2015-2016, 2016-2017 filed with jurisdictional Income Tax Authority.

16. Thus it is clear that Appellant company is a going concern which has defaulted in filing the statutory returns for the last three years. The plausible explanation has been submitted for the delay in filing the statutory returns. Hence appeal deserves to be allowed on payment of Rs 25000 as the cost to be paid in the account of Prime Ministers National Relief Fund in addition to the fees and late fees prescribed under rules.

ORDER

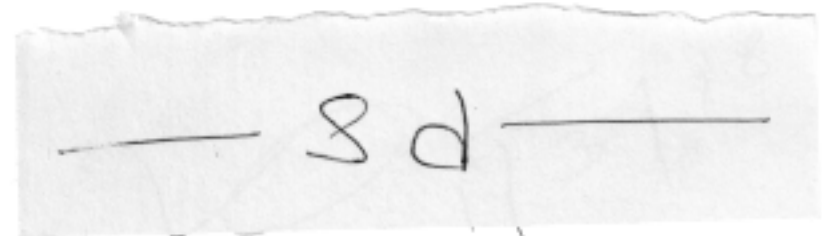
The Appeal is allowed subject to payment of Rs 25000 as the cost to be paid in the account of Prime Ministers National Relief Fund in addition to the fees and late fees as prescribed under the rules.

17. The restoration of the Petitioner Company name to the Register of Companies maintained by ROC, Kanpur is hereby ordered, with a direction that the Company shall comply with provisions of the Act and shall make all statutory compliances by filing its annual returns under the provision of the Companies Act, 2013 to the office of Registrar of the Company, Kanpur also on the Portal of MCA.
18. In addition to above, the Applicant Company shall pay a cost of Rs.25,000/- to the Central Government through the office of ROC, Kanpur as a precondition for the restoration of its name. Further a sum of Rs.25,000/- to be deposited towards Prime Minister's Relief Fund. The costs and other statutory



fees along with late fees to be paid within four weeks from the receipt of an authentic copy of this order.

19. The appeal bearing CA No.149/ALD/2017 is therefore disposed of on the directions stated above. The Learned Roc shall restore the name only after perusal of Compliance report of cost imposed. The Company is directed to file all the required documents and shall fulfil other relevant statutory compliances within 30 days from Restoration of its name in the Register of Companies maintained by ROC.



V.P. Singh,
Member (Judicial)

Dated: 01.03.2018