

IN THE NATIONAL COMPANY LAW TRIBUNAL
SINGLE BENCH
NEW DELHI

CA No.268/ND/2017

IN THE MATTER OF SECTION 252 OF THE COMPANIES ACT, 2013.

In the matter of:

**Sonik Technologies Private Limited,
5/300, Mukta Prasad Nagar,
Bikaner-334001 (Rajasthan)**

... Petitioner

**Registrar of Companies,
Corporate Bhawan, G/6-7,
Second Floor, Residency Area,
Civil Lines,
Jaipur-302001.**

.. RESPONDENT

Coram:

**R.VARADHARAJAN,
Hon'ble Member (JUDICIAL)**



Counsel for the Petitioners : Mr.Jai Prakash Sharma, Advocate

**Counsel for the Respondents : Ms. Lakshmi Gurung, Standing
Counsel, Income Tax Deptt.**

Order delivered On: 23.02.2018

ORDER

The petition has been filed on 23.06.2017 seeking for restoration of Sonik Technologies Private Limited (hereinafter referred to as the 'Company') struck off from the Register of Companies by the Registrar of Companies, by one of the shareholder-cum-Director of the Company struck off, as an aggrieved person and hence has come before us by way of the above appeal. In the appeal it is stated that the Company was incorporated on 26th August, 2008 under the erstwhile Companies Act, 1956 with the Registrar of Companies, Jaipur, Rajasthan and that the registered office of the Company was situated at 5/300, Mukta Prasad Nagar, Bikaner-334001, Rajasthan. The main object of the Company as per the Memorandum of Association which has been extracted in the appeal and upon a perusal of the same shows that the Company had been incorporated for the purpose of carrying on internet and telecommunication services



and e-commerce facilities and such like business. The appeal also discloses that the authorized and paid up capital of the Company was to the extent of Rs.1.00 lakh divided into 10000 equity shares of Rs.10/- each. It is admitted by the appellant that when all the applicable forms and returns to RoC were not filed due to inadvertence as the Company could not file balance sheet and annual returns which lead to the Respondent to issue strike off notice under STK-5 on 10.3.2017 and followed it up with striking off and dissolution in Form STK-7 on 23.6.2017. It has also been represented that Form STK-5 was not received by the Company. However, it is represented that it received a copy of the order in STK-7 and in the circumstances the Company was not able or in a position to oppose the process of striking off by the Respondent. It is further represented that the Company is still a going concern and doing business and also filing regularly the Income Tax returns and the Directors are ready to file all pending forms and returns with RoC with applicable fee and additional fee and that the name of the Company be restored and all the compliances by way of filing the pending forms and returns with RoC be permitted as well as to issue consequence directions. The appeal also states that the appeal has been filed within the period of limitation as prescribed under Section 252 read with Section 433 of the Companies Act, 2013.



2. Consequent to the service of notice of appeal, the Respondent RoC, Jaipur, Rajasthan has filed a reply and the main objection of RoC is that the Company had not filed the statutory returns i.e. annual return and balance sheets since financial year 2013 and in the circumstances the Respondent has exercised the powers given under Section 248(1) of the Act after duly issuing notice for the striking off the Company and after following due procedure. The contention of the appellant that notice under Section 248(1) was not issued in form STK-5 is denied by the Respondent. In relation to the same, it is averred in the reply that notice under Section 248(1) was issued to the Company in form STK-1 on 10.3.2017 and the notices in form STK-5, STK-5A and STK-7 were also issued on 31.03.2017, 26.04.2017 and 23.06.2017 respectively. At paragraph 5 of the said reply, it is also submitted that the answering Respondent has no objection if the Company is restored on the register of the companies under Section 252 of the Companies Act, 2013 provided that the Company files all the documents including the balance sheet and the annual returns for all the pending period whether it be under the Act of 1956 or under the Act of 2013, along with the prescribed fee as well as additional fee and that the restoration of name of the Company on the register of companies will not come in the way of any civil or criminal proceeding



which may arise pursuant to non-compliance of provisions of the Companies Act, 1956/2013 and in the circumstances, it is left open for this Tribunal to decide the appeal on merits.

3. Upon a copy of the appeal being served to the Income Tax Department, the report of Income Tax Department has also been filed and at page 2 of the report forwarded by the office of Income Tax Officer, Ward-2(1), Room No.54, Rani Bazar, Bikaner-334001 at paragraph No. 3 and 4, the following observations are pertinent to be noted, which is extracted as follows:

“According to official records and information received from system above mentioned company has filed their return for AY 2009-10 to 2016-17 through the mode of e-filing which have been processed under Section 143(1) by CPC Bangalore. Apart from this the assessee company has never been under scrutiny assessment.

According to the returns filed by the company and report of the Inspector assessee company is working in present. Report is submitted for your necessary action.”

4. We have carefully considered the averments made in the appeal as well as reply submitted by the concerned Respondent namely RoC, who has been impleaded as Respondent in this case as well as observations of the Income Tax Office. It is evident from the report of



Income Tax Office that throughout the period i.e. from 2009 being the year of incorporation till 2016-17, the Company had been filing its income Tax returns. From the bank statement annexed for the period from 1.4.2017 till 28.9.2017, which includes the date of striking off namely 23.6.2017 when the name of the Company was actually struck off by the Respondent it has been consistently operating the Bank Account it had with ICICI Bank Ltd. It is also further evident from the records furnished by the appellant vide diary No.525 dated 18.1.2018 that the Company is enjoying registration under GST. It is also seen from the Income Tax Returns for assessment year 2016-2017, the Company had declared a gross income of Rs.74127 and from the financial statement it is evident that there has been purchases as well as sales of products thereby leading to revenue from operations and thus the appellant has been able to fairly establish that the Company was carrying on business/operations for a period of two immediately preceding financial years prior to striking off.

5. Taking into consideration that the challenge of notice by the appellant in relation to the striking off may not be sustainable, however, it is evident that the Company has been engaged in continuous operations since its incorporation which is also vouched by Income Tax Department in view of the observations made and



extracted as above. Further, it is also seen that Respondent namely RoC have no serious objections in restoring the name of the Company in the register of companies maintained by it and this Tribunal hence directs restoration of the name of the Company in the register of companies maintained by the Respondent, subject to the following terms.

The Petitioner/Appellant Company shall:

- (a) Within a period of 15 days from the date of restoration of the Petitioner Company's name in the register being maintained by the RoC, the appellant/ petitioner will file inter alia its annual returns and balance sheets as well other compliances statutorily required to be made under the Companies Act, 2013 for the period from which there has been default with requisite charges/fees as well as additional fee/late charges.
- (b) That the Petitioner Company out of its funds, set apart a sum of Rs.2,00,000/- and deposit the same with the Respondent/RoC to defray the cost and expenses as well as towards filing fee and any additional fee in filing the returns and documents which has been failed to be filed leading to its name being struck off from the



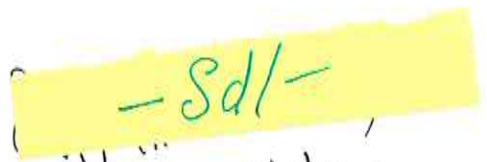
Register of Companies within a period of one month from the date of this order. In case of any amount payable in excess of the sum specified towards defraying the cost incurred by the Respondent/ROC and towards other amounts as are required to be paid by the Company statutorily, the same shall be remitted by the Company.

- (c) Till all compliances are made by the Petitioner Company, the Petitioner Company shall not alienate or dispose of any of its valuable assets.
- (d) It is further observed that by virtue of this order of restoration of the name of Appellant/ Petitioner Company in the register it will not entitle the Directors of the Company whose names in case have been disqualified by virtue of provisions of Section 164 of the Companies Act, 2013 by the Respondent/RoC automatically to be restored to directorship except in accordance with law.
- (e) An affidavit of compliance of the aforesaid directions shall be filed by the Petitioner within a period of 2 months from the date of this order.



- (f) Further this order allowing the appeal shall also not circumscribe the power of the respondent to proceed against the Petitioner Company and its Directors as mandated for alleged late filing of any forms, documents, returns and such other compliance under the provisions of Companies Act, 2013.

The Appeal is disposed of accordingly.


- Sd/-
23/2/18
(R.VARADHARAJAN)
MEMBER (JUDICIAL)

U.D.Mehta
23 /2/2018