

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH

Appeal No.16/252/ND/2018

IN THE MATTER OF:

KALAAMB AROMATICS & NATURAL PRODUCT Pvt. Ltd. ...Petitioner
B-36, Teacher Colony, Ext. Industrial Area
Sameypur, Delhi- 110042

VERSUS

THE REGISTRAR OF COMPANIES ...Respondent

Order Delivered on: 04.09.2018

CORAM:

MS. INA MALHOTRA, MEMBER(JUDICIAL)

MS. DEEPA KRISHNA, MEMBER (TECHNICAL)

PRESENT- CS. Reema Jain for the Appellant
Mr. Manish Raj for the RoC

ORDER

Per Ms. Ina Malhotra (Member Judicial)

This is an Appeal/ Petition which has been filed by Kalaamb Aromatics & Natural Product Private Limited CIN: U24233DL2005PTC133658, invoking the provision of section 252 of the Companies Act, 2013 for restoration of the name of the petitioner

company in the register maintained by the Registrar of Companies, NCT of Delhi and Haryana.

2. As per the averments was Kalaamb Aromatics & Natural Product Private Limited incorporated on 07.03.2005 and has its registered office at B-36, Teacher Colony, Ext. Industrial Area, Sameypur, Delhi- 110042 within the jurisdiction of this Tribunal. The main object of Company is to carry on the business as dealers in all kinds, types & forms of fragrances.

3. A sweeping action was initiated by the RoC at the instance of MCA in striking of the names of several Companies who had failed to file their Statutory Returns. The appellant has failed to file its Annual Returns and Financial Statement after the financial year ending 31st March, 2013, thereby giving rise to the surmise that the business of the company was not in operation. Consequently, its name was struck off by the Respondent from the Register of Companies under Section 248 of the Companies Act, 2013, upon taking steps in accordance with law and issuing a notification in the Official Gazette. The name of the effected companies was posted on its website.

4. The appellant company admits its default in carrying out the statutory compliances but submits that the same was on account of miscommunication between the directors of the Company. The copies



of the audited Balance Sheets for the previous financial years have been placed on record to show that the business of the company was in operation.

5. In order to sustain the said plea, the petitioner has placed before us the following evidence:

- i. The Audited balance of the appellant company reflects Long Term Borrowings, Trade Receivables, Loans & advances, cash & cash equivalents from the shareholder.
- ii. Copy of bank statement issued by SBI showing various transaction.

6. It also submitted that due to inadvertence their Bank viz SBI had made an inadvertent error in their PAN on account of which their advance tax was not credited. The said error has been acknowledged and is required to be set right.

7. The provisions pertaining to restoration of the name of the company has been provided in Section 252 of the Companies Act, 2013 and the same envisages that if the Tribunal is of the opinion that the removal of the name of the company from the register of the companies is not justified in view of the absence of any of the grounds on which the order was passed by the Registrar, or it in the opinion of the Tribunal it is

considered just and equitable to restore the name of the company in the Register of Companies, it may direct the RoC to restore the name in its Register.

8. The case of the appellant is covered by a catena of judgments where restoration has been duly allowed. As per the law laid down, a chance should be given to the company, its members and creditors to revive the company, giving them the opportunity of carrying on the business if the court is satisfied that such restoration is necessary in the interest of justice.

9. On perusal of the submission made in paragraph 5 & 6 above, a reasonable presumption can be inferred that the company was active before being struck off from the register. Rectification of the credit of the advance tax to the appellants account also necessitates restoration of the name of the appellant in the Register of Companies. The assumption of RoC that the company was not in operation was founded merely on grounds of non-filing of the Statutory Returns. The Act itself provides for redressal of these defaults. A step as stringent as what has been taken at least requires an opportunity to the appellant to take remedial measures. Merely to disallow restoration on grounds of its failure to file annual returns would neither be just nor equitable. As per several decisions of various Courts it should only be in exceptional circumstances that Courts should refuse restoration where the

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company has been struck off for its failure to file annual return as that would be excessive or inappropriate penalty for that oversight.

10. Accordingly, the petition is allowed subject to payment of costs of Rs. 25,000/- to the Prime Minister Relief Fund. The restoration of the petitioner company's name in the Register will be subject to their filing all outstanding documents for the defaulting years as required by law and completion of all formalities, including payment of any late fee or other charges which are leviable by the respondent for the late filing of statutory returns. The name of the petitioner company shall then stand restored in the Register of the Registrar of Companies (RoC), as if its name of the company had not been struck off.

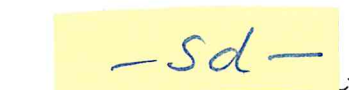
11. The direction for freezing the Bank Account(s) of the appellant company, if on this ground, shall consequently be also set aside immediately to enable the company carry out its business operation. Compliance of this order for restoration shall be made by the respondent with all its consequential effects within one week of compliance by the appellant.

12. The petition is disposed of accordingly.

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


Deepa Krishan

Member (T)


Ina Malhotara

Member (J)