

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH - III

Appeal No. 334/252/ND/2018

CORAM: SHRI R. VARADHARAJAN, MEMBER (JUDICIAL)

DR. V.K. SUBBURAJ, MEMBER (TECHNICAL)

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

IN THE MATTER OF:

LANDMARK FACILITY AND PROPERTY MANAGEMENT PRIVATE LIMITED

(Petitioner Company)

VERSUS

THE REGISTRAR OF COMPANIES

(Respondent)



MEMO OF PARTIES:

**LANDMARK FACILITY AND PROPERTY PRIVATE LIMITED
CIN: U93000DL2009PTC187851
A-11 CHITTARANJAN PARK,
New Delhi – 110019**

.....Petitioner

VERSUS

**THE REGISTRAR OF COMPANIES
4th Floor, IFCI Towers,
Nehru Place, New Delhi – 110019**

.....Respondent

**For the Petitioner : Mr. MIR IRFAN
(PRACTICING COMPANY SECRETARY)**

**For the Respondent / ROC IT : Mr. Manish Raj,
(Company Prosecutor for ROC)
Ms. Lakshmi Gurung
(Standing Counsel for Income Tax)**



ORDER

Delivered on: 05.9.2018

1. This is an Appeal/ Petition which has been preferred u/s 252 of the Companies Act, 2013 by the Petitioner Company in relation to an order of striking off the name of the Petitioner Company passed by the Respondent with effect from 30.6.2017 under the provisions of Section 248 of the Companies Act, 2013. Ld Counsel for the Petitioner represents that the Petitioner Company was incorporated under the provisions of Companies Act, 1956 and has its registered office at A-11 Chittaranjan park New Delhi, 110019, India. The Company is engaged in the business of maintenance of buildings, structures, complexes, whether commercial or residential and located in any part of the world and has been carrying on the said business even as of today. It is submitted by the Ld. Counsel that due to inadvertence on the part of management and lack of professional guidance failed to file its annual accounts but it now submits that it is ready to make the requisite filings for the revival of the company. However, in view of non- filing of the Annual returns and Balance Sheets, the name of the Petitioner company from the register as maintained by the ROC has been struck off in the meanwhile on and from 30.06.2017 and in view of demonstration of continued operation of the Company over the past several years and presently too it will seriously prejudice the

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interest of the Company and the Petitioner and that taking into consideration the compliances made by the Petitioner in relation to other statutory authorities and since no one will be prejudiced if the Appeal is allowed, but on the other hand, the interest of all concerned including shareholders/creditors, employees of the Company will be seriously affected if the appeal is not allowed and the name of the company in the register of the ROC is not restored.

2. Upon notice to the Respondent, ROC has filed its reply to the above said Appeal dated 29.5.2018 and has stated that -

- a) The Company may kindly be directed to prove that it was carrying on business or was in operation and that it is just that the name of the company be restored to the register.
- b) The company may kindly be directed to file the financial statements up to date in case if the prayer is granted.
- c) Any such order which this Hon'ble Tribunal may deem fit and proper.

3. Upon notice ordered to the Income Tax Department, the Revenue has filed its report dated 16.7.2018 and upon consideration of the Appeal, it is observed it has brought forth the filing of Income Tax Returns & Tax dues as follows-

Assessment Year	Date of Filing

2012-13	01.10.2012
2013-14	30.9.2013
2014-15	29.11.2014
2015-16	30.09.2015
2016-17	16.10.2016
2017-18	-

4. We have considered the plea of the Petitioner on the one hand and the Respondent/RoC as well as the representations of Income Tax Department to whom notice was issued under the directions of this Tribunal. It is evident from the plea of the Petitioner that the Petitioner has not questioned the process undertaken by the RoC in striking off the name of the Petitioner Company as envisaged under Section 248 of the Companies Act, 2013 read with attendant Rules. However, the Petitioner is seeking for the purpose of restoration of its name in the register as maintained by RoC is relying on the ground that the Petitioner as of date is carrying on the business for which it was incorporated and it is in operation and in the circumstances, it is just that the name of the Company should be restored on the register of RoC as maintained by the Respondent. In order to sustain the said plea, the Petitioner has placed overwhelming evidences by way of the following:



- i. Copy of Bank statement issued by ICICI Bank, Oriental Bank of commerce and IDBI Bank showing transactions details and status of Company as active for the Financial Years 2014 to 2017.
- ii. Copy of Audited Annual Accounts for the year 2014 to 2017 which includes cash flow statements, Balance Sheet, Profit and Loss account statement, Schedules of Balance Sheet.
- iii. Copy of Income Tax Returns for the Assessment Years 2015 to 2018 which also reflects TDS paid for the year 2015-2016 and 2017-18 of Rs 1180 and Rs1079.
- iv. Copies of Service tax returns and Income Tax Returns for the Financial Year 2014 to 2017.

5. As submitted by the Ld. Counsel for the Petitioner, it is seen from the records as listed above particularly significant transactions over the years evidencing that the Appellant has been functioning during the period when the name of the company was struck off. However, even though it will not absolve the Appellant/ Petitioner from filing the necessary returns and documents and adhere to the provisions of Companies Act, 2013 as an onus is placed on the Appellant/ Petitioner to strictly comply with the provisions of Companies Act, 2013 without any let, in the instant case the Petitioner has demonstrated mitigating circumstances. Thus, taking into consideration the provisions of Section 252 of the Companies Act,

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2013 which vests this Tribunal with a discretion where the Company whose name has been struck off and such Company is able to demonstrate that there is a running business as on the date when the name was struck off and also keeping in consideration that it is just to do so can restore the name of the Company in the register and in the interest of all the stakeholders including members of the Petitioner, its employees as well as the revenue and the petitioner itself who seeks restoration of the name of the Company in the register being maintained by RoC and in the abovesaid circumstances the Appeal/Petition is allowed subject to the following directions namely:

The Appellant/ Petitioner Company shall:

- (a) Within a period of 15 days from the restoration of the Appellant 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 Appellant Company out of its funds, set apart a sum of Rs.2,00,000/- and deposit the same with the Respondent/RoC which




amount shall be for the purposes of payment of all fees/charges as contemplated in clause (a) above as well as to defray the cost and expenses of Register of Companies incurred in striking off, 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. Any excess amount left after appropriating for all the above shall be meticulously returned by Respondent to the Appellant.


- (c) Till all compliances are made by the Appellant Company, the Appellant 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 Appellant 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 Appellant 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.


(Dr. V.K. SUBBURAJ)
MEMBER (TECHNICAL)


(R. VARADHARAJAN)
MEMBER (JUDICIAL)

U.D. Mehta / D