

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**NEW DELHI BENCH**

**Appeal No.829 /252/ND/2018**

**IN THE MATTER OF:**

ADARSH GARMENT PRIVATE LIMITED .....Petitioner

VERSUS

THE REGISTRAR OF COMPANIES ...Respondent

**Order Delivered on:10.10.2018**

**CORAM:**

**MS. INA MALHOTRA, MEMBER (JUDICIAL)**

**MS. DEEPA KRISHNA, MEMBER (TECHNICAL)**


For the Petitioner: Mr. Chandradip Bharti, Advocate.

For the Respondent: Ms. Kusum Yadav, Company Prosecutor, ROC.

**ORDER**

**Per: DEEPA KRISHAN, MEMBER (T)**

1. The erstwhile director of Adarsh Garment Private Limited bearing CIN No.: U74994DL1992PTC047583 has filed the present appeal, 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, by Adarsh Garment Private Limited it was incorporated on 12.02.1992 and has its registered office at G-44A, Laxminagar, New Delhi-1100921, within the jurisdiction of this Tribunal. The main object of Company is “To do the business in India or Abroad of importing, exporting, manufacturing, producing, exhibiting, distributing, purchasing, selling or dealing in all types of readymates garments, hosiery and handicraft items, whether made of cotton, polyester or any other fabric or material”.

3. It is submitted by the appellant that a sweeping action was initiated by the ROC at the instance of MCA in striking off the names of several Companies who had failed to file their Statutory Returns. The appellant has filed its Annual Returns and balance sheet only up to the financial year ending 31.03.2003, 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 lack of knowledge and negligence. 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. Copies of Acknowledgement of Income Tax Returns for the Financial Years 2015-16, 2016-17 and 2017-18.
- ii. Copies of 26AS for financial years 2009-10 to 2016-17.
- iii. Copies of Audited Financial statement and the Annual Returns of the Company for the financial years 2014-15, 2015-16, 2016-17.
- iv. Copies of Bank Statement 22.07.2016 to 30.03.2017.
- v. Copies of electricity bill from 21.02.2018 to 21.06.2018.
- vi. Titled deed of ownership of property to establish their claim.


6. The provisions pertaining to restoration of the name of the company have 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, it may order restoration of the name of the company in the register of companies. Further, restoration may also be directed by the Tribunal if it is just and equitable to restore the name of the company in the Register of Companies.


7. On perusal of the documents referred to in paragraph 5 above, a reasonable presumption can be inferred that the company was active before being struck off from the register. 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. 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 Court should refuse restoration where the company has been struck off for its failure to file annual return as that would be excessive or inappropriate penalty for that oversight.

8. 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, as if its name of the company had not been struck off in accordance with Section 248(5) of the Companies Act, 2013 with all consequential effects and benefits.



9. 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.
10. The petition is disposed off accordingly.
11. Let the copy of the order be served to the parties.

  
**Deepa Krishan**  
**Member (T)**

  
**Ina Malhotra**  
**Member (J)**