

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH

Appeal No.791/252/ND/2018

IN THE MATTER OF:

M/S AIMS SANYA DEVELOPERS PRIVATE LIMITEDPetitioner

VERSUS

THE REGISTRAR OF COMPANIES ...Respondent

Order Delivered on: 26.09.2018

CORAM:

MS. INA MALHOTRA, MEMBER (JUDICIAL)

MS. DEEPA KRISHAN, MEMBER (TECHNICAL)

Present: Ms. MALIN SUD, Mr. SHALEEN SRIVASTAVA & Mr. S.P. SINGH

CHAWLA

ORDER

Per: DEEPA KRISHAN, MEMBER (T)

1. The erstwhile director of M/S Aims Sanya Developers Private Limited bearing CIN No.: U70101DL2010PTC202339 have 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 Sandstorm Infotech Private Limited, it was incorporated on 24.02.2009 having its registered office at D-13, Defence Colony, New Delhi, Delhi- 110024 within the jurisdiction of this Tribunal. The main object of Company is “ To deal, build, acquire, sale, develop, consultancy, broking agency, in the development of land, all real estate projects including residential/commercial buildings and complexes, hospitals, cinema hall, hotels, road, bridges, factories, godowns, IT parks, business parks, bio-tech park, amusement park, retail outlets, infrastructure project of infrastructure and construction related activities.”

3. It is submitted by the appellant that 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 balance sheet after the financial year ending 31.03.2016, 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 Assessment Years 2015-16, 2016-17 and 2017-18.
- ii. Copy of the financial statements of the Appellant Company for FY 2014-2015.
- iii. Copy of the Audited Balance Sheet along with notes of the Appellant No.1 for FY 2015-16 and 2016-17.
- iv. Copies of Provisional Balance sheet of the Company for the financial year 2017-2018 along with notes and trial balance for the period 01.04.2018 till 10.08.2018.

6. 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, 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 appeal 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 the 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.

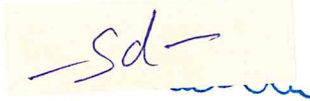


9. The direction for freezing the Bank Account(s) of the appellant company, if on this ground, shall consequently be also set aside immediately to enable the company to carry out its business operation. Compliance of this order for restoration shall be made by the respondent with all its consequential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

10. The petition is disposed of accordingly.

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


Deepa Krishan
Member (T)


Ina Malhotra
Member (J)