

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH

Appeal No.653 /252/ND/2018

IN THE MATTER OF:

CDR CONSTRUCTIONS PRIVATE LIMITEDPetitioner

VERSUS

THE REGISTRAR OF COMPANIES ...Respondent

Order Delivered on: 20.09.2018

CORAM:

MS. INA MALHOTRA, MEMBER (JUDICIAL)

MS. DEEPA KRISHAN, MEMBER (TECHNICAL)

For the Petitioner: Mr. Himanshu Harbola, Advocate.

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

Mr. Ajit Sharma and Mr. Ashutosh Senger,

Standing Counsel for IT Dept.

ORDER

Per: DEEPA KRISHAN, MEMBER (T)

1. The erstwhile director of CDR Constructions Private Limited bearing CIN No.: U45200DL2010PTC207759 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 CDR Constructions Private Limited, it was incorporated on 01.09.2010 having its registered office at B-211, Okhla Industrial Area, Phase-1, New Delhi-110020 within the jurisdiction of this Tribunal. The main object of Company is " To purchase , sell, own, develop, improve, let and/ or dispose off or let out or give on rent lands of any tenure or interest therein or to develop, erect, construct and furnish Industrial, Residential, commercial, social, rural and/or Urban Township or estates and to rebuild, enlarge, alter and improve existing structure and work thereon and to act as town planners and civil contractors and to carry on the business of Real Estate Developers and colonisers and for such purpose to prepare estimate, designs, plans and specifications"

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 financial statements and Annual Returns for the financial year 2010-11, 2011-12, 2012-13, 2013-14, 2014-15 & 2015-16, 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. Copy of bank account statement of the company for the period of 02.02.2011 to 18.10.2017 .
- ii. Copies of Audited financial Statements of the Company for the financial years 2010-11, 2011-12, 2012-13, 2013-14, 2014-15 and 2015-16.
- iii. Copies of office orders from Zila Panchayat, Public Works Department and office of District Council, Gautam Budh Nagar, Uttar Pradesh for assigning construction work and experience letters.
- iv. Copies of Service Tax Registration issued by Central Board of Excise and Customs, Ministry of Finance- Department of Revenue, Central Sales Tax Registration issued under Central Sales Tax (Registration & Turnover) Rules, 1957 and VAT registration under Uttar Pradesh Value Added Tax, 2007.
- v. Copies of the various FDR's issued by the Appellant Company in favour of the Zila Panchayat, Gautam Budh Nagar, Noida.



- vi. Copy of sales Invoices dated 17.05.2017.
- vii. Copy of the Solvency Certificate dated 12.11.2016 issued by Andhra Bank, Noida Branch.

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.

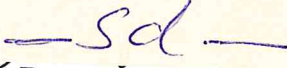


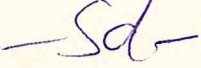
8. Accordingly, the appeal is allowed subject to payment of costs of Rs. 25,000/- to the Prime Minister Relief Fund. The restoration of the petitioner company's name in the Register will be subject to their filing all outstanding documents for the defaulting years as required by law and completion of 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)