

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH

Appeal No.646/252(1)/ND/2018

IN THE MATTER OF:

INCOME TAX OFFICER WARD 17(4)

...Petitioner

VERSUS

THE REGISTRAR OF COMPANIES

...Respondent

M/S. Narula Milk Udyog Pvt Ltd

Order Delivered on: 27.09.2018

CORAM:

MS. INA MALHOTRA, MEMBER(JUDICIAL)

MS. DEEPA KRISHNA, MEMBER (TECHNICAL)

PRESENT- Mr. Zoheb Hossain for the Appellant
Mr. Shobit Srivastava for the RoC

ORDER

Per Ms. Ina Malhotra (Member Judicial)

1. This petition has been filed by Income Tax Authority invoking the provisions of Section 252 of the Companies Act, 2013 for restoration of the name of the Respondent No. 2 company, viz M/S. Narula Milk

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Appeal No. 646/252(1)/ND/2018
Income Tax Officer Ward 17(4)



Udyog Pvt Ltd, in the Register of Companies maintained by the RoC, respondent no.1.

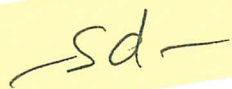
2. Service was duly effected on the respondents. Other than the RoC, none appeared on behalf of the other respondent to oppose the prayer made by the petitioner. While respondent no. 2 to 4 were proceeded ex-parte, respondent no.1, the RoC submits that they have no objections to the prayer of the applicant being granted by this bench.
3. Vide Proceedings initiated by the Ministry of Corporate Affairs, through the office of the RoC several names of companies were struck off for want of Statutory filings. Respondent no.2 company, which had also not filed any Returns or Financial Statements was duly struck off from the Register of Companies.
4. Invoking the provision of section 252 of the Act, the Income Tax Dept. prays for its restoration in order to carry out proceedings initiated against the respondent company. It is averred that the company was engaged in the business of providing accommodation entries and several companies had been floated by the group of dummy directors and shareholders. During the course of the assessment proceedings, the assessee was unable to prove its trading activities, and could not produce the relevant records. The purchase and sales

were made in cash only, and the assessee company had never maintained any bank account. The books of the assessee were rejected by the AO under section 145 of the IT Act and an addition of Rs.81,89,150/- was made under Section 69C of the Act on account of unexplained expenditure.

5. The said proceedings were impugned before CIT(A) and ITAT. At present the appellant has preferred an appeal against the order of the ITAT before the Hon'ble High Court of Delhi. However, the difficulty faced by the Revenue Dept is that the Company having been struck, the Hon'ble High Court has held that assessment of a non-existent company would be bad in law. In view of the above, the Revenue Dept was permitted to withdraw their appeal with liberty to file afresh upon restoration of the Company's name.
6. Ld. Counsel for the Income Tax Submits that the aforesaid facts necessitate restoration of the name of the Respondent Company in the Register of Companies to proceed further in accordance with law. The grounds made out by the applicant merit consideration, more so in the absence of any resistance from the other respondents.
7. The petition is therefore allowed. The RoC is directed to restore of the name of the Respondent Company in their Register and also

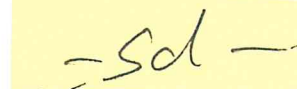


7. The petition is therefore allowed. The RoC is directed to restore of the name of the Respondent Company in their Register and also proceed to take such other and further penal action against the respondents in accordance with the statutory provisions.



Deepa Krishan

Member (T)



Ina Malhotara

Member (J)