

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH

Appeal No.545/252/ND/2018

IN THE MATTER OF:

UTIBA SOFTWARE (INDIA) PVT. LTD.
Flat No. 709-709A, Ansal Chambers-II 6,
Bhikaji Cama Palace, New Delhi- 110066

...Petitioner

VERSUS

THE REGISTRAR OF COMPANIES

...Respondent

Order Delivered on: 20.09.2018

CORAM:

MS. INA MALHOTRA, MEMBER(JUDICIAL)

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

PRESENT- Mr. Mukesh Sukhija for the Appellant
Ms. Kusum Yadav, CP for the RoC

ORDER

Per Ms. Ina Malhotra (Member Judicial)

This Appeal has been filed by M/S Utiba Software (India) Private Limited CIN: U72900DL2010PTC204093, invoking the provision of section 252 of the Companies Act, 2013 for restoration of the name of

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the appellant company in the register maintained by the Registrar of Companies, NCT of Delhi and Haryana.

2. As per the averments Utiba Software (India) Private Limited was incorporated on 14.06.2010 and has its registered office at Flat No-709-709A, Ansal Chambers-II, 6 Bhikaji Cama Palace, New Delhi- 110066 within the jurisdiction of this Tribunal.

3. 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 had failed to file its Annual Returns and Financial Statements after the Financial Year ending 31.03.2013 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. The appellant has impugned this action as RoC did not issue any show cause notice under section 248 of the Companies Act, 2013 before striking off the appellant's name from its Register and without giving an opportunity of being heard. Ld. Counsel submits that the aforesaid action of the RoC was against the principles of Natural Justice.

4. The appellant company admits its default in carrying out the statutory compliances but submits that the same was due to lack of professional guidance, inadvertence & oversight.



5. The appellant seeks relief on just and equitable grounds for invoking jurisdiction of this Bench as it has certain assets which necessitates restoration of the company's name in the record of the RoC. In order to corroborate this submission the petitioner has placed before us the following evidence:

- I. Copy of Bank Statement issued by Axis Bank showing various business transactions, including transfer of an amount of Rs. 10 Lakh towards a fixed deposit receipt.
- II. Copy of Form 26AS showing TDS deposited on the interest income accruing to the appellant company.
- III. Copy of Audited Balance Sheet of the appellant company reflecting revenue from operation for the years ending 31st March 2016 & 2017 as Rs. 90,561/- & Rs. 92,165/- respectively. In addition it has Trade Payables. The appellant derives Interest Income from its FDR of Rs. 10

Lakhs with the Axis Bank and on other deposits.

6. The provisions pertaining to restoration of the name of the company has been provided in Section 252 of the Companies Act, 2013 which includes that if in the opinion of the Tribunal it is considered just and equitable to restore the name of the company in the Register of Companies, it may direct the RoC to restore the name in its Register.

7. The RoC was granted various opportunity to demolish the appellant's submission that no opportunity was granted to them. Despite the same, no evidence to demolish these allegations has been produced before us. It is well settled that lack of opportunity of being heard itself entitles a party to have the impugned order set aside. Notwithstanding the same, Ld. Counsel submits that in view of the assets belonging to the appellant company it would be just & equitable to restore its name in the Register of Company.

8. The case of the appellant is covered by a catena of judgments where restoration has been duly allowed. As per the law laid down, a chance should be given to the company, its members and creditors to revive the company, if the court is satisfied that such restoration is necessary in the interest of justice.

9. A perusal of the documents referred to in paragraph 5 above, reflects that the appellant has certain assets which necessitate restoration of its name in the Register of Companies. Also as the RoC has not been able to substantiate that a show cause notice was issued under section 248 of the Companies Act, 2013 prior to striking off the name of the appellant from its Register entitles the appellant to have the impugned order set aside . A step as stringent as what has been taken at least requires an opportunity to the appellant to take remedial measures. 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 Courts 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.

10. 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

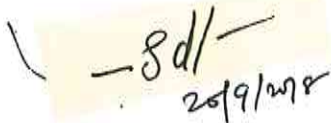


restored in the Register of the Registrar of Companies (RoC), as if its name had not been struck off.

10. 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.

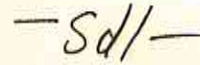
11. The petition is disposed of accordingly.

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

 - Sd/-
26/9/2018

V.K. Subburaj

Member (T)

 - Sd/-

Ina Malhotara

Member (J)