

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH

Appeal No.134/252/ND/2018

IN THE MATTER OF:

WHITE HEAVEN HOTELS & RESORTS PVT LTD
224, 3rd Floor, Westend Mall
Janak Puri, New Delhi- 110058

...Petitioner

VERSUS

THE REGISTRAR OF COMPANIES

...Respondent

Order Delivered on: 11.06.2018

CORAM:

MS. INA MALHOTRA, MEMBER(JUDICIAL)

MS. DEEPA KRISHNA, MEMBER (TECHNICAL)

PRESENT- Mr. Rajesh Kumar for the Appellant
Mr. Shobit Srivastav for the RoC

ORDER

Per Ms. Ina Malhotra (Member Judicial)

This Appeal has been filed by White Heaven Hotels & Resorts Private Limited CIN: U55101DL2010PTC207596, invoking the provision of section 252 of the Companies Act, 2013 for restoration of the name of

1

Appeal No. 134/252/ND/2018
White Heaven Hotels & Resorts Pvt.Ltd.



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

2. As per the averments, White Heaven Hotels & Resorts Private Limited incorporated on 06.08.2010 and has its registered office at 224, 3rd Floor, Westend Mall, Janak Puri, New Delhi- 110058 within the jurisdiction of this Tribunal. The main object of Company is to carry on the business of running hotels & resorts.

3. 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 had failed to file its Annual Returns and Financial Statements since its incorporation 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 names of the effected companies were 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 & inadvertence.



5. In order to sustain the submission that the appellant has a flourishing business they have placed before us the following evidence.

- I. Copy of bank statements issued by HDFC & ICICI Bank, showing business transactions.
- II. The Audited Balance Sheet of the appellant company reflecting Long Term Loans & advances, Short Term Borrowing & other Current Liabilities. Its revenue from operation in Financial Year 2015-16 was Rs. 32,34,957/- while for the Financial Year 2014-15 it was Rs. 24,63,361/-. It has cash and cash equivalent of Rs. 1,67,181/-.
- III. The appellant has filed various bookings done in the course of its business of Tours & Travels, offering packages for the State of Uttarakhand and Himachal Pradesh.

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, or 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 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, giving them the opportunity of carrying on the business if the court is satisfied that such restoration is necessary in the interest of justice.

8. On perusal of the documents referred to in paragraph 5 above, it is evident that the business of the appellant was in operation 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. 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.

9. 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 of the company 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.



Deepa Krishan

Member (T)



Ina Malhotara

Member (J)