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**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

CA/553/2020

(Under Section 252 (3) of the Companies Act, 2013)

In the matter of **M/s. Ferco Shutters & Seating India Pvt. Ltd.**

Narayanan Nagarajan Tennur,

Director cum Shareholder

M/s. Ferco Shutters & Seating India Private Limited,

Old No.65, New No.216,

Alwarpet Street, Alwarpet,

Chennai – 600 018

... Applicant

-Vs-

The Registrar of Companies,

2nd Floor, Shastri Bhawan,

26, Haddows Road,

Chennai 600 006.

... Respondent

Order Pronounced on 20th July, 2021.

CORAM :

R. SUCHARITHA, MEMBER (JUDICIAL)

ANIL KUMAR B, MEMBER (TECHNICAL)

For Applicant : Chandramouli Prabhakar, Advocate

ORDER

Per: R. SUCHARITHA, MEMBER (JUDICIAL)

1. Under consideration is an Application / Appeal which is filed by one **Mr. Narayanan Nagarajan** in the capacity as a Director cum 90% Shareholder of the Company namely, M/s. Ferco Shutters & Seating India Private Limited, under Section 252 of the Companies Act, 2013 aggrieved against the order of strike off carried out by the Respondent namely, the Registrar of

Companies, Chennai under Section 248 of the Companies Act, 2013. The present Application has been filed by the Applicant seeking thereof to restore the name of the Company in the Register maintained by the Respondent/RoC.

2. The Company viz. M/s. Ferco Shutters & Seating India Private Limited, was incorporated on 30.04.2013, under the provisions of the Companies Act, 1956, bearing CIN: U74999TN2013PTC090850 and having its registered office at Old No.65, New No.216, Alwarpet Street, Alwarpet, Chennai - 600018.

3. The main object of the Company, as per the Memorandum of Association, is to carry on the business of manufacturing and installation of different kinds of doors, roller shutters and public seating system, importers, exporters, of and dealers in all kinds of doors, roller shutters, etc. The details of the main object are set out in the Memorandum of Association which is filed along with the typed set of documents.

4. It is seen from the records that the Company has not filed its financial statements and annual returns for the period since incorporation, i.e. from the Financial Year 2013 - 14 onwards till the date of strike off with the Respondent/RoC and hence the

Respondent had initiated proceedings under the provisions of Section 248 of the Companies Act, 2013 and consequently struck off the name of the Company from the Register maintained by them. It is submitted that the Respondent/RoC has issued a notice in STK-7 on 09.08.2018 and to the said effect the publication is made in the Gazette of India dated 18th – 24th August, 2018 in S.No.1335.

5. The Learned Counsel for the Applicant submitted that the Company M/s. Ferco (Shutters) is an international manufacturer and distributor of a range of doors and shutters to protect against fire and smoke, industrial and commercial use and has its primary operations in Dubai and Singapore in the name and style of M/s. Ferco Shutters and Seating Systems M.E. (Manufacture) LLC at Dubai and M/s. Ferco Shutters & Seating Systems Pte. Ltd. at Singapore. It was submitted that the promoter directors have incorporated M/s. Ferco Shutters & Seating Systems India Private Limited before the Registrar of Companies, Tamil Nadu during the FY 2-13 – 2014 and the Company has also purchased certain property at Chegalpet Taluk, Kancheepuram District for setting up the manufacturing unit. However, it was submitted that due to extreme regressive retrospective taxation in vogue in India, there was an air of business uncertainty which lingered in the minds of the foreign

investors, which dissuaded the foreign partners to invest in a new venture. As a result of the same, all the plants for setting up the manufacturing unit were shelved and the Promoter Director have moved back to Dubai and as such the Director was not in a position to finalize the Accounts for the FY 2013 – 2014.

6. The Learned Counsel for the Applicant submitted that after extensive market research by the Applicant in the year 2019, it was found that it is feasible and highly lucrative to set up a manufacturing unit in Chennai and the Company M/s. Ferco Group would itself invest in establishing a Greenfield manufacturing plan, which would generate close to 125 direct jobs and 75 indirect and ancillary jobs. In pursuance of the same, in December 2019 a general due diligence was conducted and during such time, it was found that the name of the Company viz. M/s. Ferco Shutter & Seating India Private Limited was struck off by the Respondent in the year 2018. It was further submitted by the Learned Counsel for the Applicant that since there was no business of any nature whatsoever in the Company, they could not prepare the Financial Statements and have the same audited from time to time in compliance with the Companies Act, 2013. Under such circumstances, the Learned Counsel for the Applicant prayed for restoration of the name of the Company in the Register maintained by the Respondent/RoC

on the 'just' ground as contemplated under Section 252(3) of the Companies Act, 2013.

7. Upon notice, the Respondent/RoC has filed the Report wherein it is seen that the RoC has observed that the Applicant has stated that there was no business of any nature whatsoever was carried out in the Company and also the averments made in the Application shows that the Company was never functional and in the said circumstances has sought to direct the Applicant to go for Winding up proceedings under the Companies Act, 2013.

8. Heard the submissions made by the Learned Counsel for the Applicant and also perused the Report of the RoC. The Applicant is seeking restoration of its name in the register as maintained by RoC by relying upon the ground that it is just that the name of the Company should be restored on the Register of Companies as maintained by the Respondent. In order to sustain the said plea, the Applicant has placed the following evidences:

- i. Financial Statements and Annual Returns for the period from 31.03.2014 till 31.03.2019;
- ii. ITR – V Acknowledgment for FY 2018 – 2019
- iii. Sale Deed entered into and executed in favour of the Applicant



- iv. Proposed Blue print of the Factors & Adjoining warehouse which the Applicant seeks to commence construction upon revival.

9. Upon perusing the aforesaid documents, it is seen that the Company has not placed on record any document to show that they have been active and carrying on its business operations immediately two years preceding the date of strike off. However, a perusal of other communications which are placed along with the written submissions discloses the fact that the Company is having future prospects of running the same for the purpose of which it was incorporated. The Hon'ble High Court at Delhi while dealing with the 'just ground' as envisaged under the Companies Act, in the matter of **M.A.Panjwani -vs- Registrar of Companies & Ors. 2015 192 CompCas 380 (Delhi)** has held as follows: -

"16. In Helen C. Rebella vs. Maharashtra S.R.T.C.: MANU/SC/0621/1998: (1999) 1 SCC 90, it was observed by the Supreme Court that the word "just" denotes equitability, fairness and reasonableness having a large peripheral field. In understanding its scope, one must take into account all the facts and circumstances of the case and then decide what would be just and equitable. In M.A. Rahim and Anr. vs. Sayari Bai: (MANU/TN/0218/1973: AIR 1973 Mad. 83) it was held by a Division Bench of the Madras High Court that the word "just" connotes reasonableness and something conforming to rectitude and justice, something equitable and fair. In Sidhant Garg and Anr. vs. Registrar of Companies & Ors.: (2012) 171 Comp.Cas. 326 it was held by this Court (Manmohan.J.) that the word "just" would mean that it is fair and prudent from a commercial point of view to restore the company and that the Court has to examine

the concept of 'justness" not exclusively from the perspective of a creditor or a member or a debtor, but from the perspective of the society as a whole.

10. Further, it is significant to point out here that while considering an Application under Section 252(3) of the Companies Act, 2013, this Tribunal cannot focus only on the past activities, however, is also required to look into the future prospects of the Company and an upward movement in the business cycle of that industry which would result in the generation of revenue. It is also seen from the records produced before this Tribunal that the Company is proposing to construct a manufacturing unit and has also produced a blue print in relation to the same, which also fortifies the 'just' ground being a factor to be considered by this Tribunal in the process of deciding an Application / Appeal under Section 252(3) of the Companies Act, 2013.

11. Thus, taking into consideration the provisions of Section 252 of the Companies Act, 2013 and more particularly the 'just' ground as envisaged under sub – section (3) of Section 252 of the Companies Act, we order for restoration of the name of the Applicant Company in the register maintained by the Respondent, subject to the following directions namely:

- (i) The Registrar of Companies, Chennai is ordered to restore the original status of the Applicant Company

viz. *M/s. Ferco Shutters & Seating India Private Limited* as if the name of the Company has not been struck off from the Register of Companies with resultant and consequential actions like changing the status of Company from "**strike off**" to "**Active**"

- (ii) The Company shall within a period of 30 days from the restoration of the Applicant Company's name in the register being maintained by the RoC, the Applicant/ petitioner will file *inter alia* its annual returns and balance sheets as well other compliances statutorily required to be made under the Companies Act, 2013 for the period from which there has been default with requisite charges/fees as well as additional fee/late charges.
- (iii) That the Restoration of the Company's name is also subject to the payment of cost of **₹1,00,000/-** (Rupees One Lakh only) through online payment in www.mca.gov.in under miscellaneous fees by mentioning the particulars as "payment of cost for revival of Company".
- (iv) Till all compliances are made by the Company, the Company shall not alienate or dispose of any of its valuable assets.
- (v) It is further observed that by virtue of this order of restoration of the name of Company in the register it will not entitle the Directors of the Company whose names in case have been disqualified by virtue of provisions of Section 164 of the Companies Act, 2013

by the Respondent/RoC automatically to be restored to directorship except in accordance with law.

- (vi) An affidavit of compliance of the aforesaid directions shall be filed by the Applicant within a period of 2 months from the date of this order.
- (vii) The shareholders of Applicant Company shall jointly submit an Undertaking to the Registrar of Companies stating therein that the accounts of the Company were not used as means to transact tainted money during the period of demonetization.
- (viii) Further, this order allowing the Application shall also not circumscribe the power of the respondent to proceed against the Appellant Company and its Directors as mandated for alleged late filing of any forms, documents, returns and such other compliance under the provisions of Companies Act, 2013.

12. The Application stands **allowed** on the aforementioned terms.

-sd-
(ANIL KUMAR B)
MEMBER (TECHNICAL)

-sd-
(R. SUCHARITHA)
MEMBER (JUDICIAL)

Raymond