

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

Appeal No.350/252/ND/2018

CORAM: SHRI R. VARADHARAJAN, MEMBER (JUDICIAL)

IN THE MATTER OF SECTION 252 OF THE COMPANIES ACT, 2013

In the matter of:

M/s Rivershine Solutions Private Limited

A company incorporated under the Companies Act, 1956 and having its register office at: H-7, Janpath, Shyam Nagar, Jaipur, Rajasthan-302006.

.....Petitioner

VERSUS

REGISTRAR OF COMPANIES, RAJASTHAN

Ministry of Corporate Affairs,
C/6-7, 1st Floor, Residency Area,
Civil Lines, Jaipur-302001.

.....Respondent

FOR PETITIONER (S)

: K. SHARAT KUMAR ,Adv.

FOR RESPONDENT (S)

: DR.AMOL SINDHE,DROC-DOL

ORDER

1. M/s Rivershine Solutions Pvt. Ltd has filed this appeal under the provisions of the Section 252(3) of the Companies Act, 2013 read with Rule 87-A of National Company Law Tribunal Rules, 2016, aggrieved by the order of the respondent in striking off the name of the company from the register of companies on 24.04.2017. The facts in brief narrated in the appeal is as follows: -
2. The appellant-company was incorporated as M/s Rivershine Energy Private Limited on 13.04.2010 with two directors namely Ms. Mamta Mullpudi and Ms. Reena Gupta and that the objects of the company was to provide energy solution. The appellant, subsequently, came to be reconstituted in view of competition, both in domestic and international market and the limited margins available in the business and in the circumstances the business of the appellant-company came to be changed to the present name of the company, namely, M/s Rivershine Solutions Private Limited, reflecting, the object clause which was also altered to reflect the change in the business and that there has also been change in the directorship of the appellant-company in the year 2012 and that all the above changes made in relation to the appellant-company was also duly notified to the respondent. However, the business of the company did not take off and in the circumstances the company has not filed its balance-sheet and financial statements for the year 31.03.2013 and thereafter and that in the circumstances

the name of the company has been struck off from the register by the respondent. However, it is stated that no notice in relation to the said striking from the register with the ROC was given to the appellant-company and also to its directors and the appellant-company came to know only upon its publication. This appeal has thus been filed to seek for restoration of its name as the failure to file returns was neither wilful nor want on but due to the circumstances and that this Tribunal take a lenient view as the company has been filing returns with the Income Tax Department.

3. Taking into consideration all the above facts the appellant-company wants the name of the company to be restored to the Register of Companies as maintained by the Registrar and allow to complete formalities in relation to all filings as prescribed under the provision of Companies Act, 2013 and put the company back in the same position as it was immediately prior to strike off.

4. A reply has been filed by respondent consequent to the notice of the appeal and it is contended that in exercise of the powers as contained in Section 248 of the Companies Act, 2013 to remove a name of the company from the Register of Companies, as the company has failed to commence its business within one year of its incorporation or has not been carrying on any business or operation for a period of two immediately preceding financial years and also in the circumstances that no application has been made by the appellant-company for declaring itself as a dormant company under Section 455 of the Companies Act, 2013 the name

of the company had been struck off. The ROC, it is contended under the circumstances has acted within the ambit of the provision of the Act. It is also contended that due procedure as laid down under Section 248 of Companies Act, 2013 has been followed. The respondent ROC has also stated in its reply in case if the Tribunal restore the name of the company as sought for by the appellant-company it may be directed to comply with provision of law as laid down under provision of Companies Act, 2013. For ready reference the provision of Section 252(3) has also been extracted in the reply and it has left the discretion to this Tribunal to decide the matter on merits.

5. Even though the petitioner was directed to furnish a copy of the appeal along with annexure to the Income Tax Department by the order dated 09.05.2018 in order elicit the observations of Income Tax Department in relation to the appeal, no proof has been placed by the appellant for furnishing a copy to the Income Tax Department to react to the appeal. In the circumstances, however, the matter was taken up without any representation of the Department of the Income Tax. Matter was heard by this Tribunal on 06.09.2018. During the course of oral submissions, learned counsel for the appellant pointed out to the documents as filed by the appellant along with the appeal with a view to establish that the company has been in operation or business for the immediate two years preceding the strike off, and sought to rely on the financial statements annexed for the financial years 2013-14, 2014-15, 2015-16 and 2016-17 and the copies of

acknowledgements for filing income tax returns for the assessment years 2016-17 and 2017-18. It is averred that all these taken together points that the company has been in operation or business all along.

6. However, Deputy Registrar of Companies at the time of making his submissions points out that the income tax returns which have been filed by the appellant does not disclose any revenue as all the columns contained therein reflects only 'zero' and thus it evidently shows that there has been no operation or business in relation to the appellant-company for the said two years.

7. We have carefully considered the plea of the appellant as well as the respondent ROC. However, before proceeding further it will be worthwhile to revisit the provision of Section 252(3) of the Companies Act, 2013 which is extracted for ready references as below: -

- (i) Appeal to Tribunal: -
252(1) xxx.
252(2) xxx.
- (ii) 252(3) If a company, or any member or creditor or workman thereof feels aggrieved by the company having its name struck off from the register of companies, the Tribunal on an application made by the company, member, creditor or workman before the expiry of twenty years from the publication in the Official Gazette of the notice under Sub-Section (5) of Section 248 may, if satisfied that the company was, at the time of its name being struck off, carrying on business or in operation or otherwise it is just that the name of the company be restored to the register of companies, order the name of the company to be restored to the register of companies, and the Tribunal may, by the order, give such other directions and make such provisions as deemed just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off from the register of companies.

8. Perusal of the above provision shows that this Tribunal is vested with the power to order the restoration of the name of the company to the register of companies maintained by the respondent under the circumstances, which are as follows.

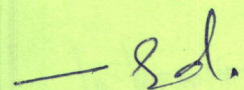
- (i) Where the company has been carrying on business at the time when the name of the company was struck off; or
- (ii) That the company was in operation at the time when its name was struck off; or.
- (iii) It is 'just' the name of the company be restored to the register of companies.

In relation to the first two conditions namely the company has been carrying operations or business, the appellant seek to rely on the income tax returns as filed by it before the Income Tax Authorities and as well as the financial statements which have been annexed along with appeal. Upon perusal of the income tax returns for the assessment years 2016-17 and 2017-18 on 15.03.2018 which have been filed along with the appeal it is seen that the said returns have been filed subsequent to strike off.

9. As rightly pointed out by Learned Deputy Registrar of Companies, for both the assessment years, the gross total income of the company has been reflected as '0' as well as the current year loss, if any, is also disclosed to be zero. In the column for equity funds the same is reflected to the extent of one lakh and all the

other columns in relation to the liabilities also discloses only zero. Similar is the disclosure in relation to assets column save an amount reflected in capital work in progress of Rs. 78,358/- has been disclosed. To a query posed to the learned counsel for the appellant at the time of oral submissions, learned counsel for the appellant was not in a position to substantiate from the financial statements as to the nature of the capital work in progress as stated to be disclosed in the financial statements as well as in the income tax returns. Apart from the above two documents, no other document of any credence has been placed before us to establish that the company has been in operation or business in relation to two years immediately prior to striking off or at the time of strike off by the respondent. Nothing was also pressed in relation due procedure not followed by ROC as made out in the appeal. Further, we do not find any circumstances for invoking the 'just' clause for the purpose of restoration of the name of the company to the register of companies of ROC as sought for by the appellants/applicant.

10. Since this Tribunal does not find any merits in the appeal, this appeal stands dismissed but without any costs.



(R. Varadharajan)
Member (Judicial)