

IN THE NATIONAL COMPANY LAW TRIBUNAL

JAIPUR BENCH

Appeal No. 633/ND/2018

Order Pronounced on: 31.08.2018

CORAM: SHRI R. VARADHANRAJAN, MEMBER (JUDICIAL)

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

IN THE MATTER OF:

**Cogent Training Research Development Consultants Pvt. Ltd and
others.**

...Petitioners

VERSUS

Registrar of Companies, Jaipur

..Respondent

For Petitioner (s) : Divanshu Mittal, CS

**For Respondent(s) : Dr. Amol Shinde
Dy. ROC-cum-OL**

**Cogent Training Research Development Consultant Pvt. Ltd. & ors.
Versus
ROC**

ORDER

1. M/s Cogent Training Research Development Consultants Private Limited claiming to be the first petitioner in the instant petition avers that the Company was incorporated under the provisions of Companies Act, 1956 as a private limited Company and certificate of incorporation was issued by the respondent ROC dated 7th of February, 2011 and that the Company is having a corporate Identification No. being CIN:U74140RJ2011PTCO34094. The registered office of the Company is stated to be situated at Office A, 3rd Floor, Tower 2, Corporate Tower Plot No A-2, JLN Marg, Malviya Nagar Jaipur, Rajasthan 302017 and that the address for communication in relation to the petitioners is stated to be the same as given above. The Company is being joined in filing this petition by two of its shareholders who have included themselves as petitioner No. 2 and Petitioner No. 3.
2. Further perusal of the petition shows that the Company was incorporated with an authorised share capital of Rs. 1 lac divided into 10,000 equity shares of Rs. 10/- each and that the issued, subscribed and paid-up share capital of the Company is also stated to be of the said amount. The main objects of the Company as can be discerned from the perusal of the petition is to carry on, inter alia, of the business of consultants in relation to infrastructure projects and to provide engineering and managing consultancy services. It is also averred in the petition that the first petitioner is a closely held Private Limited Company, having four directors and four shareholders.
3. The Company it is averred has been active since the incorporation of the Company and that it has been regular in closing its account and also convening Annual General Meetings for approval of the accounts by the shareholders of the petitioner-Company. Pursuant to its object it is

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averred in the petition that the Company has been awarded various private and government contracts and the Company has either completed or engaged in performance of the contract which has been awarded by its customers. It is also averred that the Company has also filed Income-Tax returns consistently including for assessment years 2016-17 and 2017-18, claiming a refund of Rs. 1,63,900/- and Rs. 9,39,3003/- respectively. However, it is admitted that the Company has been lax in filing its annual returns with the respondent/Register of Companies since 2011 and it is further stated that it is not wilful or malicious.

4. In support of submissions made that the Company is engaged in business activities, in other words, carrying on business for all these years and with a view to satisfy the condition laid down in Section 252 (3) of the Act, the petitioner-Company along with the petition has enclosed the following documents/records:-

- A. Certified copy of annual returns along with notice of AGM/Directors, reports of auditors along with audited financial statements of petitioner No. 1 Company for the financial years 2012-13 to 2016-17.
- B. Contracts entered into with its customers and the stage of execution by the petitioner-Company
- C. Income-tax returns filed by the petitioner Company for the assessment year 2016-17 and 2017-18.
- D. Bank Statements of petitioner-Company maintained with Bank of Baroda, Malviya Nagar Branch, Jaipur commencing from the period 2011 to 1.09.2017.
- E. Registration certificate issued by GST Authorities, Government of India in relation to the petitioner No. 1 Company.

5. In addition to the above documents filed along with the petition, the petitioner vide Diary No. 191/2018 dated 20.08.2018 has filed Form 26 AS for the assessment years 2016-17, 2017-18 and 2018-19 as well as GST returns has also been filed to demonstrate that the Company has been in operation or business. Despite the Company being in the business continuously since incorporation for the sole reason that the Company has not filed the annual returns and financial statement, the Company has been struck off from the register of companies by the respondent ROC and that the name of the Company was struck off on 23rd day of June, 2017 and hence aggrieved with the same, this petition has been preferred seeking for restoration of the name of the Company in the register of Companies maintained by the respondent.
6. In response to the above petition respondent ROC has filed a reply vide Dairy No. 5747 dated 13.06.2018. Perusal of reply which has been filed by the respondent ROC, Jaipur shows that in view of the petitioner No. 1 having not complied with the provisions of Companies Act, 1956 and Companies Act, 2013 in relation to filing of its statutory returns or balance sheet, that the Company is required statutorily to file and in view of failure of the same the respondent struck off the name of the Company under Section 248 of the Companies Act, 2013 after giving due notices to the petitioner No. 1 Company and it is also represented by the ROC in the reply that if the Company was not in operation the Company could have obtained the status of dormant Company under Section 455 of the Act.
7. Thus, taking into consideration the non-filing of the return on the one hand and the Company having not availed Section 455 of the Companies Act in declaring itself as a dormant Company, the respondent was forced to strike off the name of the Company as stated in the reply. It has also

stated that the respondent has no objection if the Company is restored in the Register of companies, taking into consideration the petition, however, the Company should be directed to file balance sheet and annual returns for all the pending period along with the relevant documents as required under the provisions of Companies Act, 2013.

8. In relation to Income-tax, learned AR for the petitioner represents that notice has been duly sent to Income-Tax, in relation to the petition as filed before this Tribunal. Dispatch proof in relation to the same has also been filed. However, there has been no representation on the part of the Income-tax in relation to the petition.
9. It is seen from the averments made in the petition as well as documents filed therewith and additional documents filed subsequently that the Company seems to have been in operation or in business during the past six to seven years, as records has not been furnished and established prior to the said period by the Company. Strong reliance is placed by the learned AR for the petitioner on Income-Tax returns filed by the first petitioner-Company seeking for refund of tax paid during for the assessment years prior to striking off name of the Company by the respondent. Perusal of the Income-tax returns shows that both the returns have been filed, subsequent to the period of striking off and under the circumstances much credence cannot be given to the returns which has been filed subsequent to the date of striking off the name of the Company. However, the Income-tax returns for these assessment years discloses deductions of TDS to the extent of Rs. 5,68,764/- for the assessment years 2016-17 and Rs. 10,80,473/- for the assessment years 2017-18. Additional documents filed vide Diary No. 191 of 2018 discloses that these deductions of tax has been made predominantly under Section

194 C of the Income-Tax Act, 1961 and perusal of the relevant provisions shows that it pertains to deductions made in relation to the fees for professional or technical services rendered, thereby, clearly evidencing that in relation to the two years immediately prior to striking off the name of the Company, the petitioner-Company had been engaged in operation or business pursuant to its objects. Even though, it is not necessary to look furthermore to establish about carrying on operations/business of the Company, however, in addition, the Company has also filed the Bank Statement, in relation to the account maintained by Bank of Baroda, Malviya Nagar Branch, Jaipur which clearly discloses that several banking transactions have taken place commencing from the year 2011-2017. Taking into consideration all of the above and as well as provisions of Section 252 of Companies Act, 2013 and it is also just to do so, this Tribunal is of the view that the name of the first petitioner Company should be restored to the Register of Companies as maintained by the Registrar of Companies, namely, the respondent, however, subject to the following directions: -

The Petitioner/Appellant Company shall:

- (a) Within a period of 15 days from the restoration of the Petitioner Company's name in the register being maintained by the ROC, the appellant/ 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.

- (b) That the Petitioner Company out of its funds, set apart a sum of Rs.3,00,000/- and deposit the same with the Respondent/ROC to defray the cost and expenses as well as towards filing any additional fee in filing the returns and documents which has been failed to be filed of the Company within a period of one month from the date of this order. In case of any amount payable in excess of the sum specified towards defraying the cost incurred by the Respondent/ROC and towards other amounts as are required to be paid by the Company statutorily the same shall be remitted by the Company.
- (c) Till all compliances are made by the Petitioner Company, the Petitioner Company shall not alienate or dispose of any of its valuable assets.
- (d) It is further observed that by virtue of this order of restoration of the name of Appellant/ Petitioner 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.
- (e) An affidavit of compliance of the aforesaid directions shall be filed by the Petitioner Company within a period of 2 months from the date of this order.
- (f) Further this order allowing the appeal shall also not circumscribe the power of the respondent to proceed against the Petitioner 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.

This petition is hence allowed subject to the above terms.

Sd-

(R. Varadharajan)
Member (Judicial)

Vishwajeet Singh

Cogent Training Research Development Consultant Pvt. Ltd. & ors.
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ROC