

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH

Appeal No. 403/252/ND/2018

**IN THE MATTER OF SECTION 252(1) OF THE COMPANIES ACT,
2013 (18 of 2013)**

AND

IN THE MATTER OF:

M/S AMARNATH ASHOK KUMAR PRIVATE LIMITED

...APPELLANT

VERSUS

REGISTRAR OF COMPANIES

And another

...RESPONDENTS

Order Pronounced on: 05.10.2018

CORAM: DR. DEEPTI MUKESH

MEMBER (Judicial)

For the Appellant: Mr. L. Kumar Yadav, CS

For the Respondent: Ms. Kusum Yadav, Company Prosecutor

For Registrar of Companies

Mr. Puneet Rai, St. Counsel with

Mr. Manas Tripathi, Advocate for Income Tax

MEMO OF PARTIES**M/S Amarnath Ashok Kumar Private Limited****Registered Office at A-21/25**

Naraina Industrial Area, Phase II

New Delhi-110028

...Appellant**VERSUS****Registrar of Companies,**

Ministry of Corporate Affairs,

4th Floor IFCI Tower,

61 Nehru Place,

New Delhi-110019

...Respondent No. 1**Commissioner of Income Tax**

Ward no. 1(3),

C.R. Building, I.P. Estate,

New Delhi – 110002

...Respondent No. 2**ORDER**

1. This appeal is filed by the company, M/s Amarnath Ashok Kumar Private Limited (for brevity the 'Company'), through its Director, Mr. Sandeep Kumar, under Section 252(1) of the Companies Act, 2013 (for brevity 'the Act') against the order of striking off the name of the company passed by the

respondent under section 248 (1) of the Act read with Rule 7 of Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 published on 30.06.2017 vide notification no. ROC-DEL/248(5)/STK-7/2879 by Registrar of Companies, the respondent herein.

2. The company is incorporated as a Private Limited Company under the provision of Companies Act, 1956 with the Registrar of Companies, NCT of Delhi and Haryana on 19.10.1978 having CIN U74899DL1978PTC009263.
3. The company is having registered office at A-21/25, Naraina Industrial Area, Phase II, New Delhi-110028.
4. Authorized share capital of the Company is Rs.10,00,000/- divided into 1,00,000 equity shares of Rs.10/- each and issued, subscribed and paid up share capital of the Company is Rs.7,00,000/- divided into 70,000 equity shares of Rs.10/- each.
5. The main objects of the company are:
 - i. To carry on the business as manufacturers, importers, exporters, repairs and dealers in furnaces equipment,

forgings, castings, plates, sheets, rods, bars ingots, ferrous and non-ferrous metals, tubes, boilers, implements, gears, drills and other tools, bolts nuts, hooks, sleepers, rolling stock and hardware articles.

And other main objects.

6. As per the notice of non-compliance of provisions of the Companies Act, 2013 in respect to filing of annual returns and financial statements since incorporation, the name of the company was struck off in terms of provision of Section 248(1) of the Companies Act, 2013 read with Rule 7 and Rule 9 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016.
7. The Appellant has submitted that the company was in operation and the business activities were carried out by the company during the period of striking off but the reporting of such activities through Annual Returns and Financial Statement had not been filed with Registrar of Companies due to inadvertence on part of the management.

8. The appellants have stated that no notice under section 248(1) of the Act in the form of STK-1 was received by the Company or any of the directors or any person on their behalf and hence not afforded any opportunity of being heard before striking of the name of the company.
9. However, without going into the controversy of the latches in following the due procedure of law by Registrar of Companies before the final act of striking off the name of the company from the register of companies maintained by Registrar of Companies, for non-filing of statutory documents by company for the relevant period, through publication of notice on 30.06.2017, the appellants have preferred to prove with documents and records that the company was in operation and doing business during the period of striking off the name of the company as a better remedy.
10. The Appellant has brought forward the following facts about it being in operation and functional during the period of striking off:

- i. The copies of financial statements of the company for the financial years from 31.03.2014 to 31.03.2016 and reflecting Profit of Rs. 17,139/- as on 31.03.2016.
 - ii. The copies of Income Tax Returns filed for the assessment years 2014-15 to 2017-18. The tax paid for assessment year 2016-17 is Rs. 5,100/-
 - iii. The copy of lease deed, dated 18.02.1976 executed by Delhi Development Authority in favour of the appellant company, for the property situated at Block No A, 21/25 Naraina Industrial Area, Phase II admeasuring about 575 square yards for consideration of Rs. 71,000/-, which is also reflected in the bank statement made in favour of Delhi Development Authority.
11. It is further submitted by the Appellants that the failure to file financial statements and annual returns with the Registrar of Companies, NCT of Delhi and Haryana was due to inadvertence on part of the management and due to lack of professional guidance and as such there was no wilful or

mala-fide motive behind non-filing of the Financial Statements and Annual returns.

12. The Registrar of Companies has stated that it has no objection if the name of the Company is restored on proving by the Company that it was carrying on business or was in operation and the Company be also directed to file financial statements up to date with appropriate filing and additional fees.
13. The Income Tax Department has submitted in its report that there is an outstanding demand of Rs. 206 and Rs. 436/- for the assessment year 2009-10 & 2015-16 respectively against the Assessee but has no objection if the company is considered for revival.
14. The grounds contemplated under section 252 of Companies Act, 2013, namely, that of the company carrying on business or was in operation at the time of striking off its name, and where it appears "just" to the adjudicating authority that the name of the company is to be restored to the Register of Companies. It is also seen from the perusal

of the provisions under Section 252(3), that if Tribunal is of the opinion it is “just” that the name of the company is to be restored to the register of companies maintained by Registrar of Companies, such orders can be passed for the name of the company to be so restored. For reference, the provisions of Section 252(3) of the Companies Act, 2013 is extracted hereunder:

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 subsection (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.

15. Further, relying on the following Judgement, namely, order of Honourable High Court of Delhi in Company Petition No. 174/2013 dated 02.12.2013, which in brief reflects the following:

“The Court is of opinion that it is “otherwise just” that the company be restored to the register in case of an immovable property, restoration can be ordered.”

Where immovable property rights are involved and in the instant case also the facts vouch for the similar decision, it is only proper that the name of the company be restored to the Register of Companies.

Hence, there exists a “just” ground for the restoration of the name of the appellant company in the Register of Registrar of Companies.

16. The Section 252(3) contemplates that one of the three conditions are required to be satisfied before exercising

jurisdiction to restore company to its original name on the register of the Registrar of Companies namely:

- i. That the company at the time of its name was struck off was carrying on business.
 - ii. Or it was in operation
 - iii. Or it is otherwise just that the name of the company be restored on the register.
17. The Appellant have submitted sufficient evidence mainly the possession of immovable property by the company and further efforts of investment to be made in immovable property by the company and that it has been in operation during striking off and therefore could not be termed as defunct company. Thus, taking into consideration the provisions of Section 252(3) of the Companies Act, 2013 which vests this Tribunal with a discretion where the Company whose name has been struck off and such Company is able to demonstrate that there is a running business as on the date when the name was struck off and also keeping in consideration that it is just to do so can

restore the name of the Company in the Register and in the interest of all stakeholders including the Appellant itself who seeks restoration of the name of the Company in the register maintained by Registrar of Companies, the company deserved to be restored.

18. Accordingly, this appeal is allowed. The Public Notice of Registrar of Companies striking the name of the company is set aside. The restoration of the company's name to the Register of Registrar of Companies is ordered subject to its filing of all outstanding documents with proper filing fees along with additional fees required under law and completion of all formalities, including payment of any late fee or any other charges which are leviable by the respondent for the late filing of statutory returns, and also subject to payment of cost of Rs. 25,000/- to be paid to Prime Minister's Relief Fund. The name of the Appellant Company shall then, as a consequence, stand restored to the Register of the Registrar of Companies, as if the name of

the company had not been struck off in accordance with Section 248(1) of the Companies Act, 2013.

19. The appeal is disposed of accordingly.
20. Let the copy of the order be served to the parties.

Sd/-

(DR. DEEPTI MUKESH)

MEMBER (JUDICIAL)