

IN THE NATIONAL COMPANY LAW TRIBUNAL

JAIPUR BENCH

Appeal No. 393/252/ND/2018

TA No. 127/2018

**CORAM: SHRI R. VARADHANRAJAN, MEMBER
(JUDICIAL)**

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

IN THE MATTER OF:

**M/s Parmar Electricals (P) Ltd.
GI-464, Industrial Area, Bhiwadi, Rajasthan.**

...Petitioners

VERSUS

**ROC & Income Tax Department
G/6-7, Second Floor, Residency Area,
Civil Lines, Jaipur-302001**

...Respondent

For Petitioner (s) : Himanshu Sharma, Adv.

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

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ORDER

1. This is an appeal filed under the provisions of Companies Act, 2013, more particularly under Section 252 (3) of the said Act read with Rule 87-A of NCLT Rules, 2016, aggrieved with the orders of striking off issued by the respondent/ROC dated 26.04.2017. The appellant represents that it is a company registered under the provisions of Companies Act, 1956 on 25.06.1996 as a Private Limited Company and in relation to the same, the respondent has issued a certificate of incorporation. The company was incorporated, inter alia, to carry on business as manufacturers, traders and dealers in all or any type of electronic motors, electronic panels, fans etc. as well as other electronic appliances and goods. The Company was registered, it is averred with an authorised capital of Rs. 1,00,000/- and that the paid-up share capital of the company is also of the same extent.

2. It is further averred in the appeal that since incorporation of the Company, the appellant has been consistently carrying on day to day transactions as reflected in the charter documents and that the company has been regularly doing business and that it has been complying with other statutory compliances under the Income-Tax, GST, VAT and that the account of the Company is also regularly maintained. However, since the directors of the company were not well-versed with the provisions of the Companies Act and the compliances which are to be made thereunder and for this purpose had engaged the service of a Chartered

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Accountant, in order to prepare its annual accounts as well as to file the necessary returns with the respondent and since the duties enjoined upon the said Chartered Accountant had not been performed by him and also did not appraise of the same, the company had been struck off by the Registrar of Companies, Jaipur being the respondent herein under the provisions of Section 248 of the Companies Act, 2013. It is also averred that no prior notice was given prior to the order of striking off issued by the respondent to the appellant or its directors as contemplated under the provision of Companies Act, 2013 and in the circumstances the order passed by the respondent is null and void.

3. Pursuant to the notice issued by the respondent ROC, a reply has been filed dated 30.05.2018. In the reply it is contended by the ROC that taking into consideration the provision of Section 248 and as well as the Company had failed to file the statutory returns, namely Annual Returns and Balance-Sheets, since Financial Year 2014 and as it is vested with the power to remove the name of the company from register of companies in the circumstances enunciated under Section 248 of the Companies Act, 2013 and also the Company had failed to declare itself as a dormant company under Section 455, the exercise of powers under Section 248(1) after following the due procedure cannot be faulted. It is further stated in the reply that however, the office of the ROC does not have any objections if the company is restored as sought for by the appellant subject to the directions that the balance-sheet and annual returns which have been omitted to

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be filed for the period during which it has not been filed be directed to be filed and as well as to pay all the fees and additional fees as prescribed under Section 403 of the Companies Act and subject to the same the name of the company can be restored with the register of companies.

4. It is seen from the order dated 12.07.2018 that even though, the Income-Tax has been duly served in this matter there has been no representation nor any observations have been filed.

5. In the circumstances, the matter was taken up on 03.08.2018 wherein certain directions were issued by this Tribunal to the Petitioner/ Appellant to substantiate the carrying on operations of the company. Pursuant to the said directions the same seems to have been complied as evidenced by the order dated 30.08.2018. Additional document in relation to the immovable property and the attendant property tax receipts, as well as other documents have been filed by the Appellant.

6. From a careful perusal of the documents filed along with the appeal, it is seen that company was having revenue from its operation for the year ended 31st March, 2016 to the extent of Rs. 30,69,537/-. It is also evident that the company was also having other income to the extent of Rs. 5,50,380/-. Further for the year ended 31.03.2017, the sale of products indicated in the financial statements is to the extent of Rs. 28,23,301/- and that company has also been trading in goods purchase to the extent of Rs. 33,09,053/- and Rs. 16,47,289/- for the year ended

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31.03.2016 and 31.03.2017 respectively. It is also seen that the company has been paying salaries to its employees and that it has filed Income-Tax Returns for the assessment years 2016-17 as well as 2017-18 though belatedly i.e. after the date of striking off. Pursuant to the directions of this Tribunal as stated earlier the company has also filed additional documents being in the nature of lease agreement between Rajasthan Industrial Development and Investment Corporation Limited (RIICO) and the appellant which has been produced in relation to the industrial plot leased to it. The remittance of lease payment as well as Water Consumption Bill in relation to the said property has also been enclosed along with the additional affidavit. Taking into consideration all the above documents as filed by the appellant in order to establish that the company is, in fact, in operation or in business, this Tribunal also keeping into consideration Section 252 (3) of the Companies Act, 2013 and the conditions laid therein for the restoration of the name of a company to the register of companies as maintained by the respondent and on being satisfied about its applicability to the facts and circumstances of the case deems it necessary that the name of the company be restored to the register of Companies subject, however, 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,

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the appellant/petitioners 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/fee as well as additional fee/late charges.

- b) That the petitioner Company out of its funds, set apart a sum of Rs. 2,00,000/- 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 leading to its name being struck off from the Register of Companies 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 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

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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.

The appeal is accordingly allowed subjected to the above noted terms.

Sd —

05/10/2018
(R. Varadharajan)
Member (Judicial)

Vishwajeet Singh
04.10.2018

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