

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH - III

Appeal No.-472/252/ND/2018

CORAM: SHRI R.VARADHARAJAN, MEMBER (JUDICIAL)

DR. V.K.SUBBURAJ, MEMBER (TECHNICAL)

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

IN THE MATTER OF:

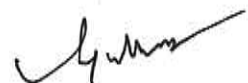
FIGARO TRADING PRIVATE LIMITED & ORS.

(Appellant Company)

VERSUS

THE REGISTRAR OF COMPANIES

(Respondent)



MEMO OF PARTIES:

**FIGARO TRADING PRIVATE LIMITED,
Having its registered Office
At E-15, 3rd Floor,
South Extension, Part II,
New Delhi- 110049**

...Appellant No. 1

**Shri Vidyut Bhalotia,
Director,
R/o 7/2, DLF Phase – I,
Gurgaon, 122001,
Haryana, India.**

...Appellant No. 2

**Shri Sadasivan Polakandathil,
Director,
R/o F-125A, Third Floor,
Lado Sarai,
New Delhi – 110030.**

...Appellant No. 3

VERSUS

**THE REGISTRAR OF COMPANIES
4th Floor, IFCI Towers,
Nehru Place, New Delhi - 110019**

...Respondent

**For the Appellant : Ms. Suhita Mukhopadhyay, Practicing
Company Secretary**

**For the Respondent/RoC : Mr. Shobhit Srivastava, Deputy Registrar of
Companies**

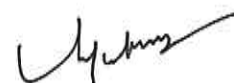
**For Income Tax
(Upon notice by Tribunal) : Mr. Puneet Rai, Advocate
(Standing Counsel for Income Tax Deptt.)**



ORDER

Delivered on: 29.08.2018

1. This is an appeal which has been preferred u/s 252 of the Companies Act, 2013 by the Appellant Company in relation to an order of striking off the name of the Appellant Company passed by the Respondent with effect from 07.06.2017 under the provisions of Section 248 of the Companies Act, 2013. Learned authorized representative for the Appellant represents that the Appellant Company was incorporated under the provisions of Companies Act, 1956 and has its registered office at E-15, 3rd Floor, South Extension, Part II, New Delhi- 110049. The company has been engaged in carrying on the business of, dealers, import and export of all kinds of industrial machines, boiler, DG sets, water pumps, diesel engines, electric motors and machinery parts and machinery spares, since its incorporation and has been carrying on the said business even as of today. Learned authorized representative for the Appellant represents that the Company has been filing its income tax returns with the Income Tax Authorities regularly. It is also submitted by the Learned authorized representative that the Company is operational as is evident from the fact that it has duly Income Tax returns for all the years till 2017-18 regularly. However, despite the abovementioned compliance with the appropriate regulatory authority, compliance in relation



to the provisions of Companies Act, 2013 with the Respondent RoC by filing annual returns and financial statements has been not been complied with due to lack of professional expertise and that the said omission is not mala fide.

2. Upon notice to the Registrar of Companies, the RoC has filed its affidavit on 29.05.2018 saying that the present company was struck off by the office of respondent because of the fact that as per the records of the office of respondent neither the company was carrying on any operation for a period of two immediately preceding financial years nor has obtained the status of a dormant company under Section 455 of the Companies Act, 2013.
3. Upon notice ordered to the Income Tax Department, the Department has filed its report on 10.07.2018 and upon consideration of the appeal it has concluded as follows:
 - i. Income Tax Returns filed for the assessment years 2011-12 onwards upto 2017-18.
 - ii. Dues of Rs.782/- are pending against the company for the AY 2008-09.



iii. Neither any proceedings are pending against the company.

4. We have considered the plea of the Appellant and the representations of RoC as well as Income Tax Department. It is evident from the plea of the Appellant that it admits the default and questions the due process undertaken by the RoC in striking off the name of the Appellant Company as envisaged under Section 248 of the Companies Act, 2013. However, the Appellant is seeking restoration of its name in the register as maintained by RoC relying on the ground that the Appellant as of date is carrying on the business for which it was incorporated. In order to sustain the said plea, the Appellant has placed before us the following documents:

- i. Acknowledgement of Income Tax payments made and returns filed for the assessment year 2011-12 onwards upto 2017-18.
- ii. Certified true copy of annual accounts for the financial year ended 31st March 2012 upto 31st March 2017 with details of turnover of the Company for Rs.1,20,000/- for the year ending 31st March 2015 and Rs.9,90,000/- and Rs. 2,40,000/- for the year 2016 and 2017 respectively.



- iii. Latest utility Bills.
- iv. List of employees and requests made by them.
- v. Certified true copies of bank statement issued by Kotak Mahindra Bank and ICICI Bank for the years 2015-17.

5. As submitted by the Ld. Counsel for the Appellant, it is seen that the Appellant has been functioning during the period when the name of the Appellant Company was struck off. However, this will not absolve the Appellant from filing the necessary returns and documents and adhering to the provisions of Companies Act, 2013 and an onus is placed on the Appellant to strictly comply with the provisions of Companies Act, 2013. Thus, considering the discretion vested in this Tribunal under Section 252 of the Companies Act, 2013 to order the restoration of the name of the company where the struck off company is able to demonstrate that there is a running business as on the date when the name was struck off and further, considering that it is just to do so and in the interest of all the stakeholders including the Appellant Company itself and in the abovesaid circumstances the Appeal is allowed subject to the following directions namely:

The Appellant Company shall:

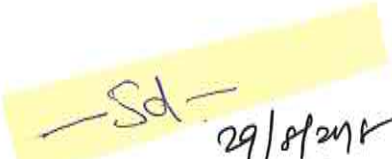
- (a) Within a period of 15 days from the restoration of the Appellant Company's name in the register being maintained by the RoC, the Appellant will file interalia its annual returns and balance sheets as well other compliances statutorily required to be made under the Companies Act, 2013 for the period from which there has been default with requisite charges/fees as well as additional fee/late charges.
- (b) That the Appellant 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.

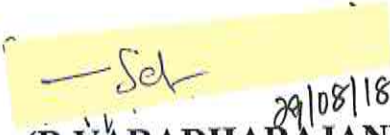


- (c) Till all compliances are made by the Appellant Company, the Appellant Company shall not alienate or dispose of any of its valuable assets.
- (d) It is further observed that by virtue of this order of restoration of the name of Appellant/Appellant Company in the register it will not entitle the directors of the Company whose names have been disqualified by virtue of provisions of Section 164 of the Companies Act, 2013 by the Respondent/RoC to be automatically restored to directorship except in accordance with law.
- (e) An affidavit of compliance of the aforesaid directions shall be filed by the Appellant 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 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.

The Appeal is disposed of accordingly.


(DR. V.K.SUBBURAJ)
MEMBER (TECHNICAL)


(R.VARADHARAJAN)
MEMBER (JUDICIAL)

Deepak