

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
KOLKATA**

**CP(Appeal) NO. 685/KB/2018**

In the matter of:

Section 252 and other applicable provisions of the Companies Act, 2013

And

In the matter of:

Xwin Software Solution Private Limited(Company name Strick Off by Registrar of Company)

And

Masum Ahamed, working for gain at 6/5, NC Mitra Road, 2<sup>nd</sup> Floor, Kolkata – 700 028 within the jurisdiction of this Tribunal

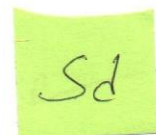
.. Petitioner

- Versus -

The Registrar of Companies, West Bengal, having its Office at Nizam Palace, IInd MSO Building, 2<sup>nd</sup> Floor, 234/4, AJC Bose Road, Kolkata – 700 020, within the jurisdiction of this Tribunal

.... Respondent

Coram: Mr. Jinan K.R., Member(Judicial)



For the Appellant:

1. CA Shashi Agarwal

Date of Pronouncement of the Order: 10-10-2018

## O R D E R

Per Shri Jinan K.R., Member (Judicial)

1. This is an Appeal filed by Xwin Software Solution Private Limited, represented by one of its shareholders under Section 252(3) of the Companies Act, 2013 for restoration of the name of the Company struck off by the ROC, West Bengal for the reason of non filing of annual return and financial statements from the financial year ending 31-03-2014 onwards.
2. The Appellant company was incorporated on 16-04-2013 as a Private Limited company and carrying on business of investment and trading. The company is in operation even though not active. Inadvertently, the annual return and balance sheets could not be filed for the year ended 31-03-2014 onwards. Due to the disqualification of Directors of the Company it came to the knowledge that balance sheets and annual returns of the Company was not up to date filed with the Office of the Registrar of companies, West Bengal and when immediate steps were taken by the directors of the Company, it is learnt that the Company's name has been struck off. Thereby, the struck off was informed to the shareholders and the shareholders filed the Appeal praying for the restoration of the name of the Company in the Register of Companies, West Bengal.
3. To prove that the Company was a going concern, the Appellant produced copies of annual returns, copies of Directors' reports, copies of Income-tax returns and the copies of statement of Bank accounts. The documents annexed with the Appeal proves that the Company was a going concern when the Company's name was struck off. The Registrar of Companies, West Bengal has not acted judicially as the name of the Company can be struck off only when the

company has not started its business activities within one year of incorporation or not carrying on business activities for two years, whereas, the name of the Company has been struck off due to on filing of returns. The Company has regularly carried on business as on the date of the striking off the name of the Company and regularly filing the Income Tax returns with the Income Tax Department. The action of the striking off of the name is not justified and should not be permitted. Upon he above said contentions, the Appellant prays for restoration of the name of the company in the register of Companies, West Bengal.

4. The Respondent/Registrar of Companies, West Bengal filed the report contending in brief the following:

The Appellant company has not filed its balance sheets and annual returns since incorporation i.e. 31-03-2013 onwards with the Office of the Respondent. The Appellant company was incorporated on 16-04-2013 and the name of the Company was struck off on 09-06-2017 after complying with the provisions of Section 248 of the Companies Act, 2013. The Registrar of Companies has issued notice to the Company as well as to the directors under section 248(1) of the Companies Act, 2013 read with Rule 7 of the Companies(Removal of Names of Companies From the Register of Companies) Rules, 2016 for removal of the name of the Company from the register of Companies as there was reasonable cause to believe that the Company was not functioning or in operation for the period of last two minimum preceding financial years and has not made any application within such period for obtaining the status of dormant Company under Section 456 of the Companies Act, 2013.

Further it is submitted that due to non-filing of statutory returns by the company, the competent authority drew an opinion that the Company was not carrying on business or in operation. Further, it is submitted that as per provision of Section 248(5) of the Companies Act, 2013 after the expiry of the prescribed time period and as no response has been received from the Company and the

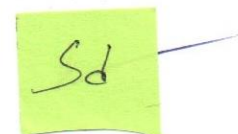
public, a notice(in STK No.7) dated 30-06-2017 was issued by the Registrar of Companies, West Bengal reflecting the name of the Company as strike off with effect from 09-06-2016. The Petitioner company's name appears at Sl. No. 8000 of the Registrar of Companies notice (STK-7) dated 30-06-2017 and the same was published in the official Gazette on 15-07-2017.

5. Upon the above said contentions the Hon'ble Tribunal may pass orders it may deem fit and proper.

6. Heard the Ld. Pr. CA. Perused the records.

7. This is an Appeal preferred by one of the shareholders of the Appellant company admitting that there is default on the side of the Appellant company in submitting the Annual Returns from from the date of inception onwards. According to the Appellant it was due to inadvertent mistake. Being admitted the default in non filing the annual returns and the financial statements the contention that the ROC, West Bengal has not applied its mind judicially and struck off the name of the Company, is found devoid of any merit. Non filing of returns for more than two years enabled the ROC to have an inference as contended by the ROC, West Bengal that the Company was not functional on the date of striking off of the name of the company. Nothing brought out to prove that the notice allegedly issued by the ROC, West Bengal under Section 248 has not been received by the Appellant Company or the Directors of the Appellant Company. Therefore, there is no irregularity or illegality in the order passed by the ROC, West Bengal in striking off the name of the Company.

8. Being satisfied that there is no illegality or irregularity in striking off the name of the Company, the question is whether the Appellant has succeeded in proving that the Company was a going concern on the date of striking off the name of the Company. At the outset, the documents produced on the side of the appellant proves that it is a going concern doing business, generating income though running in loss for few years. The data consolidated from the Balance sheets produced on the side of the Appellant is given below:



<b>F.Y Ending</b>	<b>Asset</b>	<b>Liability</b>	<b>Turnover</b>	<b>Profit &amp; Loss</b>
31-03-2014	21,57,610=00	21,57,610=00	37,36,998=00	(13,350=00)
31-03-2015	19,85,153=00	19,85,153=00	32,35,660=00	(8,737=00)
31-03-2016	8,86,547=00	8,86,547=00	29,27,832=00	(8,352=00)
31-03-2017	17,88,530=05	4,77,092=00	32,72,065=00	5,809=00

9. The above said data available from the financial statements produced on the side of the Appellant proves the case of the Appellant that the Company was a going concern. The copies of the Income Tax returns also produced on the side of the Appellant. But it seems that no regular filing of Income Tax return as alleged in the appeal. The IT returns for the Assessment year 2016-2017 and 2017-2018 seen produced on the side of the Appellant. That too seems to have filed subsequent to the date of striking off of the name of the Company. So, before the date of striking off of the name of the Appellant company, they were not in the habit of filing of income-tax returns. However, the copy of the statement of bank accounts produced on the side of the Appellant also strengthened the contention of the Appellant that it was a going concern.

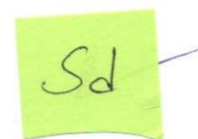
10. The transactions evidenced from the statement of bank accounts also strengthened the contention of the Appellant that it was doing some business as alleged. The Directors' report also seen annexed with the appeal to show that meetings of directors were convened as alleged.

11. On scrutiny of the above said documents, it appears to me that the Company was a going concern, however, sleeping over its statutory right in not filing the annual returns and financial statements for more than three years. Therefore, the Appeal is liable to be allowed upon payment of cost Rs. 75,000/-

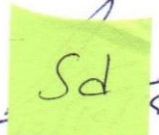
(Rupees Seventy five thousand only) which would, according to me, be reasonable in the nature of peculiar circumstance of the case in hand.

12. Accordingly, the appeal is allowed invoking the power of this Tribunal under Section 252(3) of the Companies Act, 2013 upon the following directions:

- (i) The Registrar of Companies, the respondent herein, is ordered to restore the original status of the Appellant Company as if the name of the company has not been struck off from the Register of Companies with resultant and consequential actions like changing status of Company from 'strike off' to Active;
- (ii) The Appellant company is directed to file all pending statutory document(s) including Annual Accounts and Annual returns for the financial years 2014-2015 to 2016-2017 along with prescribed fees/ additional fee/fine as decided by ROC within 30 days from the date on which its name is restored on the Register of companies by the ROC;
- (iii) The Company's representative, who has filed the Company appeal on behalf of the Appellant Company, is directed to personally ensure compliance of this order.
- (iv) The restoration of the Company's name is also subject to the payment of cost of Rs 75,000/- (Rupees Seventy five thousand only) through online payment in [www.mca.gov.in](http://www.mca.gov.in) under miscellaneous fee by mentioning particulars as "payment of cost for revival of company pursuant to orders of Hon'ble NCLT in CP(Appeal) No.685 /KB/2018".
- (v) The appellant is permitted to deliver a certified copy of this order with ROC within thirty days of the receipt of this order.



- (vi) On such delivery and after duly complying with above directions, the Registrar of Companies, West Bengal is directed to, on his office name and seal, publish the order in the official Gazette;
- (vii) This order is confined to the violations, which ultimately leads to the impugned action of striking off the name of the Company, and it will not come in the way of ROC to take appropriate action(s) in accordance with law, for any other violations /offences, if any, committed by the appellant company prior or during the striking off of the company.
13. The CP (Appeal) No. 685/KB/2018 is disposed of accordingly.
14. Urgent certified copy of this order, if applied for be issued upon compliance with all requisite formalities.

  
(Jihañ K.R.)  
Member(Judicial)

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