

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

C.P. (Appeal) No.122/KB/2018

Coram: Mr. Madan B. Gosavi, Member (Judicial)

In the matter of

An application under Section 252 (3) of the Companies Act, 2013 for restoration.

And

In the matter of:

MODAK INTERNATIONAL PRIVATE LIMITED (Company Name Struck Off by Registrar of Companies, West Bengal) having its registered office 41, Durga Charan Doctor Road, Taltala, Kolkata 700 014 in the state of West Bengal, within the aforesaid jurisdiction;

And

In the matter of:

Mr. SATYENDRA NATH MODAK, address at 41 Durga Charan Doctor Road, Kolkata 700 014 in the state of West Bengal, within the aforesaid jurisdiction.

... Petitioner

And

In the matter of:

REGISTRAR OF COMPANIES, WEST BENGAL, having its office at Nizam Palace, 2nd M.S.O. Building, 2nd Floor, 234/4 A.J.C. Bose Road, Kolkata 700 020, within the aforesaid jurisdiction.

.... Respondent

Counsel on Record:

Mr. Arun Kr. Upadhyay, Advocate] - For the Appellant.
Mr. Debanjan Saha, Advocate]
Ms. Anasua Mukherjee, Advocate]

Date of Pronouncement of Order: 7th September 2018

ORDER

1. This is an appeal filed under Section 252(3) of the Companies Act, 2013, filed by one Mr. Satyendra Nath Modak son of Mr. Sachindra Nath Modak residing at 41, Durga Charan Doctor Road, Kolkata 700 014, an ex- director and shareholder of the appellant Company which has been struck off by the Registrar of Companies West Bengal from 09.06.2017 for non-filing of annual returns and balance sheets seeking restoration of the Company, namely, Modak International Private Limited on the Register of Companies maintained by the Registrar of Companies, West Bengal.

2. The appellant Company is a Private Company limited by shares incorporated on 9th December 2011 under the provisions of the Companies Act, 1956 having its registered office at 41, Durga Charan Doctor Road, Taltala, Kolkata 700 014 in the state of West Bengal. The authorized share capital of the Company is Rs.50,00,000/- (Rupees Fifty Lakhs only). There were two directors in the Company.

3. The appellant contends that the Company could not file annual returns and balance sheets since its incorporation from the financial year ended 31st March 2012 due to inadvertent mistake on the part of the management of the Company.

Upon receipt of the notice, the appellant Company prepared all relevant documents from the financial year ended 31st March 2012 onwards and showed its readiness to submit it before the respondents.

4. The respondent, ROC West Bengal in response to the notice issued by the Tribunal filed its affidavit in opposition contending in brief is the following:

The respondent denies each and every allegation made in the appeal memorandum except those contentions which was specifically admitted in the affidavit in opposition. The respondent contends that in exercise of the power conferred upon the Registrar of Companies under Section 248 of the Companies Act, 2013 the said Registrar can strike off the name of the Company from his register after complying with certain formalities as provided by the said Section when he has reasonable cause to believe that the company is not carrying on business or in operation. The respondent has struck off the name of the Petitioner Company under Section 248 of the Companies Act, 2013 since he had reasonable cause to believe that Modak International Private Limited (hereinafter referred to as the 'Company') was not carrying in business in operation for a period of two (2) immediately preceding financial years. It is evident from the records that the Company has not filed its Balance Sheets and Annual Returns since 31.03.2012 before the office of the respondent. The appellant company was in receipt of notice issued by respondent Registrar of Companies (ROC) West Bengal under Section 248(1) (in e-form STK-5) of the Companies Act, 2013 read with Rule 7 of the Companies (Removal of Names of Companies from the Registrar of Companies) Rules 2016 declaring its intention to remove the name of the Company from Registrar of Companies w.e.f. 09.06.2017

As per Section 252 of the Companies Act, 2013 a struck off company can be restored only on the direction of the NCLT within a period of three (3) years from the date of the order of the Registrar. In this regard it is submitted that in terms of the said provisions the NCLT while passing an order for restoration is to be satisfied that the company is carrying on business or in operation.

5. Upon the said contentions the respondent prays for passing of an order deemed fit and proper considering the objections raised by the respondent.

Heard Ld. Counsel for the appellant and perused the records.

6. One among the shareholder director of Modak International Private Limited, namely, Mr. Satyendra Nath Modak filed this appeal under Section 252 of the Companies Act 2013 for restoration of the Company's name in the Register of the ROC West Bengal. The Appellant Company admittedly failed in submitting the annual returns and balance sheets since incorporation from the financial year ended 31st March 2012 onwards on the ground of inadvertent mistake on the part of Company as he failed in filing return in time. The appellant also admitted the receipt of notice under Section 248(1) of the Companies Act, 2013 issued by the Registrar of Companies, West Bengal. Therefore, there is no illegality or irregularity on the side of the respondent ROC West Bengal in striking off the name of the Company from the register of the respondent.

7. It has come out in evidence that the appellant Company has not filed its statutory documents i.e. Balance Sheets and Annual Returns from 31.03.2012. In order to satisfy this Tribunal that the appellant Company is a going concern, the appellant produced the annual returns, balance sheets, directors' report, copy of Income Tax Return and statement of Bank Accounts. It is good to have a look at the financial statements and audited accounts for the year ended 2012-13, 2013-14, 2014-15 and 2015-16 annexed with appeal memorandum and rejoinder documents on 21.08.2018. The struck off Company has also filed Income Tax Returns. A copy each of the Income

Tax acknowledgements for the assessment years 2012-13 to 2016-17 is annexed with the affidavit and rejoinder documents. The struck off Company has been maintaining its Bank Account. A copy of the Bank Statements of the struck off Company is also annexed with rejoinder dated 21.08.2018.

8. A perusal of the Profit & Loss Account and Assets and Liabilities, it appears to us that the appellant Company is a going concern and doing business. It is seen from the Profit & Loss Accounts of the Company submitted vide affidavit and rejoinder documents that the Struck Off Company made a net profit of R.3,476/- for the year ended 31.03.2016.

Accordingly, upon careful screening of the documents produced from the side of the appellant, it appears to me that the appellant Company is a going concern. The struck off Company is engaged in the business of trading of all kinds of industrial goods and chemicals as also other related work etc. However, it failed in filing annual returns and balance sheets as per the provisions of the statute and thereby respondent ROC West Bengal was forced to strike off the name of the Company from the register of the Companies. However, the reason for non-filing of annual returns and balance sheets in time narrated by the appellant in the Appeal Memorandum seems to be unbelievable and unacceptable. The appellant Company is found defaulted in filing of the returns for more than 6 (Six) years consecutively. Therefore, the appeal is liable to be allowed upon payment of cost of Rs.1,00,000/- (Rupees One Lakh only) which is found reasonable considering the peculiar circumstances of the case in hand.

Accordingly, I allow the appeal by exercising the powers conferred on this Tribunal under Section 252 of the Companies Act, 2013 upon the following directions:

Sd

ORDER

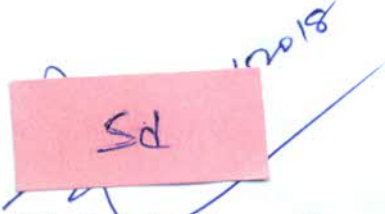
- (1) The Registrar of Companies, the respondent herein, is ordered to restore the original status of the Applicant Company as if the name of the company has not been struck off from the Register of Companies with resultant and consequential actions like changing status of Company from 'strike off to Active; to activate DIN Nos of the applicants etc.
- (2) The Applicant company is directed to file all pending statutory document(s) including Annual Accounts and Annual returns for the financial years 2011-2012 to 2017-2018 along with prescribed fees/ additional fee/fine as decided by ROC within 45 days from the date on which its name is restored on the Register of companies by the ROC;
- (3) 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.
- (4) The restoration of the Company's name is also subject to the payment of cost of Rs.1,00,000/- (Rupees One Lakh only) through online payment in 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 C.P. (Appeal) No.122/KB/2018".

Sd

- (5) The applicant is permitted to deliver a certified copy of this order with ROC within thirty days of the receipt of this order.
- (6) 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;
- (7) This order is confined to the violations, which ultimately leads to the impugned action of striking 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 /offenses, if any, committed by the applicant company prior or during the striking off of the company.

The C.P. (Appeal) No.122/KB/2018 is disposed of accordingly.

Urgent certified copy of this order, if applied for be issued upon compliance with all requisite formalities.


(Madan B. Gosavi)
Member (J)

Signed this day of 7th September, 2018.

PS_Aloke