

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

Before Shri Madan B. Gosavi, Member (Judicial)

C.P. (Appeal) No.528/KB/2018

In the matter of:

An application under Section 252 and other applicable provisions of the Companies Act, 2013 for restoration;
-And-

In the matter of:

Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 and other relevant Rules;
-And-

In the matter of:

M/s. Bengal Sun Solar Energy (I) Private Limited (Company's name struck off by the Registrar of Companies, West Bengal);
-And-

In the matter of:

Tamal Bhattacharjee, working for gain at 53, B.L.Mukherjee Road, Nimta, Kolkata- 700 049, one of the shareholders of the Company within the jurisdiction of this Tribunal;

.. Petitioner

-Versus-

In the matter of:

REGISTRAR OF COMPANIES, Ministry of Corporate Affairs, Govt. of India, West Bengal having his office at Nizam Palace, 2nd MSO Building, 2nd floor, 234/4, Acharya Jagdish Chandra Bose Road, Kolkata- 700 020 within the jurisdiction of this Tribunal;
.. Respondent

Counsel on Record:

CA Shashi Agarwal

] For the Appellant

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Date of Pronouncement of Order: 26th September, 2018

ORDER

This is an appeal filed under Section 252 and other applicable provisions of the Companies Act, 2013, seeking restoration of the name of the Company, M/s. Bengal Sun Solar Energy (I) Private Limited in the Register of Companies maintained by the Registrar of Companies, West Bengal.

2. The appellant's averment in brief for the consideration of the points for determination are the following:
3. M/s. Bengal Sun Solar Energy (I) Private Limited was incorporated on 09.05.2011 under the Companies Act, 1956 as a Private Company limited by shares with the Registrar of Companies, West Bengal having CIN: U74999WB2011PTC162443 to carry on the business of investment and trading. As on date the company is carrying on business of manufacturing industrial power and energy. The Company was formed in pursuance of Articles of Association having an authorized capital of Rs. 5,00,000/- divided into 50,000 equity shares of Rs. 10/- each and Issued, subscribed and paid-up share capital of the company is Rs.5,00,000/- divided into 50,000 equity shares of Rs.10/- each. There are three Shareholders and Directors in the company.
4. The Appellant avers that the Financial Statements & Annual Return for the period 31.03.2012, 31.03.2013, 31.03.2014, 31.03.2015, 31.03.2016 and 31.03.2017 of the Appellant company had not been filed with the ROC West Bengal due to disqualification of directors of the company. The appellant further states that with respect to compliance of the Companies Act and default in non-filing of the annual returns with the respondent and in compliance of its statutory



obligations, the ROC, West Bengal had *suo motu* struck off the name of the company from its register from 9th June, 2017 and without its restoration in the register of ROC, the company is unable to operate its day to day business activities due to losing its legal status. RoC had a reasonable cause to believe that the company was not functioning or in operation for the period of last three financial years. Hence, the appellant filed this appeal for restoration of the company's name in the register of the RoC, West Bengal under section 252 of the Companies Act, 2013.

5. The appellant vide supplementary affidavit dated 09.08.2018 avers that the RoC erred in wrongly assuming that the company is not carrying on business activities only on the basis of non-filing of documents as per the Companies Act, 2013. Such provisions of non-filing of documents can not be the reason to believe that the company is neither carrying on any business activities nor is in operation. Further, the whole action of RoC is based on "Reason to Suspect" whereas the name of the company should be struck off only when RoC has reasonable cause to believe that the said company was not carrying on any business activities.

6. ROC, West Bengal filed an Affidavit-in-Opposition in reply to the petition filed by the appellant contending in brief the following:

7. The RoC, in exercise of the power conferred upon the RoC under section 560(5) of the Companies Act, 1956 corresponding to section 248 of the Companies Act, 2013, has struck off the name of the appellant company since he had reasonable cause to believe that the company was not functioning or in operation for the period of several years and not filed annual statutory returns as per the Companies Act, 1956 since the financial year 2011-2012. The RoC also stated in his report that the competent authority 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 the appellant company was not carrying in business or in operation for the last three years. ROC further stated in the report that the Tribunal may give directions for the revival of the Company under Section 560(5) of the Companies Act, 1956 corresponding to section 252 of the Companies Act, 2013 upon filing of all due Statutory Returns. In this regard, it is submitted that in terms of the said provisions, the Hon'ble NCLT, while passing an order for restoration, is to be satisfied that the company is carrying on business or in operation. Upon the said contentions, the ROC, West Bengal prays for passing appropriate orders as may deem fit and proper in the case of this nature.

8. Heard the Ld. Pr.CS appearing for the appellant and perused the records.

9. M/s.Bengal Sun Solar Energy (I) Private Limited represented by the shareholders of the company 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 Company is incorporated on 09.05.2011 and according to the appellant, it is carrying on its business since incorporation but failed in submitting annual returns, balance sheets due to some internal problems and lack of fund and thereby the Registrar of Companies West Bengal had *suo motu* struck off the name of the company and, therefore, the present appeal is filed. According to the Ld. Pr.CS appearing for the appellant, the company is carrying on its business activities since its incorporation till today and the company is regularly carrying on business progressively and if the company's name is not restored, irreparable loss and prejudice would be caused to the appellant company and it prays for restoration.

10. The appellant has further averred that they could not file its financial statements and balance sheets for the financial years ended on 31.03.2012, 31.03.2013, 31.03.2014, 31.03.2015, 31.03.2016 and 31.03.2017 before the Registrar of Companies, West Bengal since its inception. However, the appellant company has filed the Income-Tax returns and the copies of the Income Tax returns have been submitted and the audited accounts for the above-said years have now been prepared and produced and annexed with the petition. It is good to have a look at the financial position for the last four financial years 2013-14, 2014-15, 2015-16 and 2016-17 annexed to the petition. Following are the data available from the balance sheets and profit and loss accounts for the above said year.

Financial Year Ending	Assets (Rs.)	Liabilities (Rs.)	Turnover/ Revenue (Rs.)	Profit (Rs.)
31.03.2014	1,07,702/-	1,07,702/-	1,71,031/-	131/-
31.03.2015	4,97,411/-	1,97,411/-	66,75,356/-	2,39,078/-
31.03.2016	69,33,027/-	69,33,027/-	1,29,57,484/-	5,20,095/-
31.03.2017	1,64,00,160/-	1,64,00,160/-	3,29,67,961/-	12,39,405/-

11. The above table clearly shows that there is enough revenue/Turnover from operation and there is profit as shown above. It is also the fact that the Company was doing business and the company is in operation and it is earning profit continuously. Therefore, the company should be given one more opportunity to be restored to continue its business. However, I am not convinced with the reasons highlighted by the appellant in non-filing of the financial statements and annual returns consecutively for more than three years and sleeping over their rights in not filing return and not even replying to the notice issued by the ROC under Section 248 but it is not enough to hold that the company was inoperative.

12. Therefore, it appears to me that this appeal is liable to be allowed upon payment of a cost of Rs.1,00,000/- (Rupees one lakh only). Considering the

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peculiar nature and circumstances of the case, awarding a cost of Rs.1,00,000/- seems to be fair and just.

13. In the result, the appeal is allowed by exercising the power conferred on the Tribunal under Section 252 of the Companies Act, 2013 upon the following directions:-

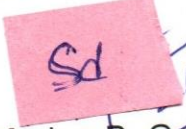
- (1) The Registrar of Companies West Bengal, the respondent herein, is ordered to restore the original status of the Appellant Company as if the name of the company has not been struck off from the Register of Companies with resultant and consequential actions like changing status of Company from 'strike off to Active; to activate DIN Nos of the appellants etc.
- (2) The Appellant company is directed to file all pending statutory document(s) including Annual Accounts and Annual returns for the financial years 2011-2012 to 2016-17 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 Appeal No.528/KB/2018".



- (5) The appellant 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 /offences, if any, committed by the appellant company prior or during the striking off of the company.

The Appeal No.528/KB/2018 is disposed of accordingly.

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


6/9/2018
(Madan B. Gosavi)
Member (J)

Signed this day of 26th September, 2018.