

**THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH**

CP No. 164/252/ND/2017

IN THE MATTER OF:

M/s Foresight Microtech Private Limited
S-152, Greater Kailash-II,
New Delhi-110048

.... Petitioner

Versus

The Registrar of Companies

..... Respondent

CORAM:

Order Delivered on: 26th April, 2018

MS. INA MALHOTRA, MEMBER (JUDICIAL)

MS. DEEPA KRISHAN, MEMBER (TECHNICAL)

Present: Mr. S.S. Bhati, PCS for the Applicant.

Ms. Easha Kadian, Counsel for the Income Tax Department

Mr. Manish Raj for the RoC

ORDER

Per Ms. Ina Malhotra(Member Judicial)

This is an appeal filed by M/s Foresight Microtech Private Limited
CIN No. U15331 DL1988 PTC031643 invoking the provision of Section
252 of the Companies Act, 2013 for restoration of the name of the

Page 1 of 6

petitioner company in the register maintained by the Registrar of Companies, NCT of Delhi and Haryana.

2. As per the averments, M/s Foresight Microtech Private Limited was incorporated on 10.05.1988 having its registered office at S-152, Greater Kailash-II, New Delhi-110048, within the jurisdiction of this Tribunal. The main object of the company was to carry on business of Engineering process, and Management Consultants etc.
3. A sweeping action was initiated by the RoC at the instance of MCA in striking of the names of several Companies who had consistently failed to file their Statutory Returns. The appellant has failed to file its Returns after financial year ending 2013, thereby giving rise to the surmise that the business of the company was inoperative. Consequently its name was struck off from the Register of Companies under Section 248 of the Companies Act, 2013, by the Respondent, after issuing a notification under Section 248(5) in the Official Gazette dated 08.07.2017 applicable to all defaulters. The names of the effected companies were posted on its website.
4. The appellant company submits that it has tangible assets in the form of immovable property Conveyance Deed dated 20.08.2002 has been placed on record. The said plot was allotted by HSIIDC vide letter of allotment dated 14.03.2002. Further, the balance sheet of the appellant company reflects Trade Payables & Receivables & Long Term Borrowings from the Shareholder.
5. The Registrar of Companies has filed its response submitting that the name of the company was struck off pursuant to a direction issued by the Ministry of Corporate Affairs. It is

further stated that due steps had been taken in accordance with the statutory provisions under Section 248 (1) and 248 (4) of the Companies Act, 2013 before striking off the name of the petitioner company from their register. It is confirmed that the impugned action was initiated as the Petitioner Company did not file the Balance Sheet and Annual Returns gave rise to the reasonable presumption that the petitioner company was not in operation.

6. The Respondent, Registrar of Companies, has further stated that the name of the company may be restored in the Register of Companies on the undertaking that the company will file its pending Annual Returns and Balance Sheets for the period in default along with the requisite late filing fee as prescribed under the law.
7. The provision pertaining to restoration of the name of the company has been provided in Section 252 of the Companies Act, 2013 and the same envisages that if the Tribunal is of the opinion that the removal of the name of the company from the register of companies is not justified in view of the absence of any of the grounds on which the order was passed by the Registrar, it may order restoration of the name of the company in the register of companies:
8. The case of the appellant is covered by a catena of judgements where restoration had been duly allowed. As per the law laid down, a chance should be given to the company, its members and creditors to revive the company and gave them the an opportunity of carrying on the business if the Court is satisfied that such

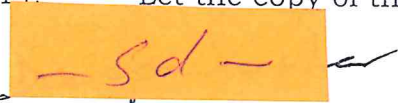
restoration is necessary in the interest of justice.

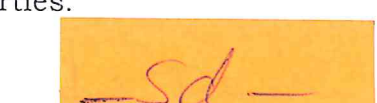
9. On perusal of the documents, a reasonable presumption can be inferred that the company was carrying on its business and was operative at the time of its name being struck off from the Register. The assumption of Registrar of Companies that the company was not in operation was founded merely on grounds of non-filing of the Returns. The Act itself provides for redressal of these defaults. A step as stringent as what has been taken at least requires an opportunity to the appellant to take remedial measures, failing which they may face the consequences. In the present case, the appeal has been filed within the stipulated period prescribed under Section 252 of the Act. The ROC has no objection to the restoration of the Company subject to filing of returns with the prescribed fees. Besides nobody is prejudiced by the restoration of the name of the Company. On the contrary the restoration is clearly in the interest of the company. Despite the fact that the management of the company failed to file the statutory returns, yet as the company is a running company and the appeal against the impugned order has been filed on time, this Tribunal has the power direct restoration of the name of the company with the RoC. The non adherence to the statutory provision on time can be rectified by imposing cost. Merely to disallow the restoration on this grounds would neither be just nor equitable.

10. From the documents on record, this Bench is satisfied that the appellant Company was doing business all along. Under such circumstances, the appeal merits full consideration. It should only be in exceptional circumstances that courts should refuse

restoration where the company had been struck off for its failure to file annual returns as that would be excessive or inappropriate penalty for that oversight. The non adherence to the statutory provision on time can be rectified by imposing cost.

11. Accordingly, the petition is allowed. The restoration of the petitioner company's name in the Register will be subject to their filing all outstanding documents for the defaulting years as required by law and completion of all formalities, including payment of any late fee or any other charges which are leviable by the respondent for the late filing of statutory returns and also on payment of cost of **Rs. 25,000/-** to be paid to the Prime Minister Relief Fund. The name of the petitioner company, its directors and members shall then, stand restored in the Register of the Registrar of Companies, as if the name of the company had not been struck off in accordance with Section 248(5) of the Companies Act, 2013 with all consequential effects and benefits.
12. The directions for freezing the Bank Account(s) of the appellant company if on this ground, shall consequently be also set aside immediately to enable the company carry out its business operations. Compliance of this order for restoration shall be made by the Respondents with all its consequential effects within one week of compliance by the appellant.
13. The petition is disposed of accordingly.
14. Let the copy of the order be served to the parties.


(Deepa Krishan)
Member (T)


(Ina Malhotra)
Member (J)