

IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT-III
NEW DELHI

Appeal No.380/252/ND/18

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:

KALPANA INTERNATIONAL BREWERIES LIMITED & ORS.

(APPELLANT)

VERSUS

THE REGISTRAR OF COMPANIES, NEW DELHI

(RESPONDENT)



MEMO OF PARTIES:

1. KALPANA INTERNATIONAL BREWEREIS LIMITED
CIN: U74899DL1995PLC065266
NEAR DILSHAD GARDEN,
DRIVE WELL SERVICES STATION COMPLEX,
GT ROAD-110095, NEW DELHI
...PETITIONER NO. 1
2. KALPANA AGARWAL
D-24, VIVEK VIHAR,
DELHI-110095
...DIRECTOR/ PETITIONER NO. 2
3. SHAKUNTLA AGARWAL
D-24, VIVEK VIHAR,
DELHI-110095
...DIRECTOR / PETITIONER
NO.3
4. PRITI AGARWAL
D-24, VIVEK VIHAR, DELHI-110095
...DIRECTOR/ PETITIONER NO.4

VERSUS

REGISTRAR OF COMPANIES, NCT OF DELHI & HARYANA
4TH FLOOR, IFCI TOWER 61,
NEHRU PLACE, NEW DELHI- 110019

..RESPONDENT

For the Appellant: Mr. MANISH K BANSAL, A.R.

For the respondent and

the Intervener:

MR. DOPAL SINGH, DY ROC FOR ROC

MR. PUNEET RAI, JR. ST. COUNSEL, INCOME TAX

DEPARTMENT WITH AAYUSHMAAN VATSYAYANA,

ADVOCATE

ORDER

Delivered on: 28.08.2018

1. This is an Appeal which has been preferred 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 21.08.2017 under the provisions of Section 248 of the Companies Act, 2013. Ld Counsel for the Appellant represents that the Appellant Company was incorporated under the provisions of Companies Act, 1956 and has its registered office at Dilshad Garden, Drive well services station complex, GT Road-110095, New Delhi. The Company is primarily into the business to engage in and carry on the business as importer, exporter, dealers, traders, agents, merchants, producers, manufactures and dealers in liquors, beer, wine and juice, spirits, aerated waters and liquor of every kind whether intoxicating or not and for that purpose to set up, install, purchase, import or otherwise acquire all plants, machinery and related equipment and to buy, sell, manufacture, import, and deal in all types of stoppers of bottles, caners, jars, flasks, bottles, corks including in-plate crown corks create and containers, whether of glass or any other material, other packing material, and to run, maintain all such machinery and equipment. In relation to compliance with the provisions of Companies Act, 2013 with the Respondent RoC by filing annual returns and financial statements it has been stated it has been omitted to be complied with and that the said omission is not mala fide. However, in view of non-filing of the Annual returns and Financial

Statement, the name of the Appellant Company from the register as maintained by the RoC has been struck off on and from 21.08.2017 and it will seriously prejudice the interest of the Company and the Appellants and since no one will be prejudiced if the Appeal is allowed, but on the other hand, the interest of all concerned including shareholders/creditors, employees of the Company will be seriously affected if the appeal is not allowed and if the name of the company in the register of the RoC is not restored.

2. Upon notice to the Respondent RoC, RoC has filed its reply to the above said Appeal. In paragraph 4 and 5 of the reply, the following has been submitted:

“4. That the company had filed its last Annual Return and Balance Sheet for the financial year on 31.03.2013 and 31.03.2013.

5. That the subject company was strike off w.e.f. 21.08.2017 in terms of provision of 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.”

3. It is evidenced from the report/observations as filed by the Respondent and as represented by the Ld. Company Prosecutor that Appellant had not filed its Annual Returns and Balance Sheets since 31.03.2013 due to which the Respondent had reasonable cause to believe that the petitioner company was inactive. Ld. Company prosecutor insisted that

due process of law prior to striking off was strictly complied with and in view of the Respondent not having received any communication from the Petitioner Company in response to the notice issued under sub-Section 1 and sub-Section 4 of Section 248 of the Companies Act, 2013 and Rule 7 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016, the Respondent was forced to follow the procedure for striking off and in the circumstances the decision for restoration is being left to this Tribunal for its consideration.

4. In relation to income tax upon notice directed to be issued, Income Tax has filed its observations, and concluded to the following effect:

Details of ITRs filed if any	A.Y.	Date of filing	Income/ Loss Returned	Taxes Paid
	2012-13	29.09.2012	(-)4,40,036/-	NIL
	2013-14	30.01.2014	(-)1,850/-	NIL
	2014-15	31.03.2016	NIL	NIL
	2015-16	31.03.2016	NIL	NIL
	2016-17	31.03.2017	NIL	NIL
	2017-18	NOT FILED	-	-

5. Perusal of the documents annexed, along with the appeal, it is seen that the appellant has enclosed copy of the arbitration award by Dr. Justice Arijit Pasayat, Sole Arbitrator vide Case Ref. No. DAC/137/03-12 and that an arbitration award was passed on 17.11.2015 in favor of the appellant company granting relief and an amount of Rs. 85.33 lacs and interest to be received by the company. The appellant company is also involved in the arbitration appeal before the Hon'ble high court of Delhi filed by International Breweries Limited vide Case No. O.M.P.(comm.) No. 72 of 2016 against the Appellant which is pending before the high court of Delhi. In addition to the above orders, the appellant has also filed:

- I. *Balance sheet for the financial year ended on 31.03.2014, 31.03.2015, 31.03.2016, 31.03.2017*
- II. *Copy of Acknowledgement regarding of Income Tax Returns for the years 2013-14, 2014-15, 2015-16 and 2016-17*
- III. *Copy of Minutes of Annual General Meeting for the year 2014, 2015, 2016 and 2017.*

6. Seeing that even though the Company has not generated any income or loss for the past 3 years, as vouched by the income Tax Department in its Report but has been also consistently complying with the statutory formalities arising thereunder. Following the order of this tribunal passed in Re- Three Star Properties Pvt. Ltd. Company Appeal No.127/252/ND/2018, and also in Gold String Interiors Private

Limited C.P. NO.297/ND/2017, it is seen that the main plank of opposition of RoC seems to be that the appellant company has not been carrying on or conducting business two years prior to the date of striking off. However, as rightly contended by Ld. Counsel for the appellant in addition to the two situations of grounds contemplated, namely, that of the company carrying on business or was in operation at the time of striking off its name, the second situation, which is an alternative situation, is one where it appears "just" to the company court that the name of the company be restored to the register. It is also seen from the perusal of the provisions under Section 252(3), that this Tribunal if it is of the opinion that it is "just" that the name of the company is to be restored to the register of companies maintained by RoC, such orders can be passed for the name of the company to be so restored. For ready reference, the provisions of Section 252(3) of the Companies Act, 2013 is extracted hereunder:

"(3) If a company, or any member or creditor or workman thereof feels aggrieved by the company having its name struck off from the register of companies, the Tribunal on an application made by the company, member, creditor or workman before the expiry of twenty years from the publication in the Official Gazette of the notice under sub-section (5) of section 248 may, if satisfied that the company was, at the time of its name being struck off, carrying on business or in operation or otherwise it is just that the name of the company be restored to the register of companies, order the name of the company to be restored to the register of companies, and the Tribunal may, by the order, give such other directions and make such provisions as deemed just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off from the register of companies."

Further in this regard it is seen that there is a pending Arbitration Appeal before the Delhi High Court and if the name of the company is not restored it will suffer irreparable loss despite having an award in its favour and eventhough in appeal will make it lose the ^{right}~~right~~ to contest the appeal, and this Tribunal is of the considered view that it is "just" to allow the Appeal. Thus in the instant case the Appellant has demonstrated mitigating circumstances and taking into consideration the provisions of Section 252(3) of the Companies Act, 2013 which vests this Tribunal with a discretion where the Company whose name has been struck off interalia on the grounds that without due procedure having not been followed and such Company is also able to demonstrate that there is a running business as on the date when the name was struck off or able to demonstrate that it is "just" to do so can restore the name of the Company in the register as maintained by the Registrar of Companies. However it is seen from the ROC's reply that the Company has failed to file its Annual Returns and Balance Sheets since 31.03.2013 which is highly irresponsible on the part of the Appellant Company and its Promoters which entails costs being levied on the Appellants. This Tribunal while considering the appeal has also taken into account the representation of the revenue through its standing counsel that Income Tax Department does not have any objection, if the restoration of the name of the company struck off is permitted. Taking into consideration the interest of stakeholders including the shareholders who have sought for the restoration of the name of the Company in the register being maintained by RoC and in

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view of the circumstances elucidated above and the respondent will not be prejudiced and in the absence of any adverse consequences being demonstrated by the statutory authorities to whom notices had been issued, the Appeal is allowed subject to the following directions namely:
The Appellant/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 inter alia 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 which amount shall be for the purposes of payment of all fees/charges as contemplated in clause (a) above as well as to defray the cost and expenses of Register of Companies incurred in striking off, 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. Any excess amount left after appropriating for all the above shall be meticulously returned by Respondent to the Appellant.



- (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 Company in the register it will not entitle the Directors of the Company whose names in case have been disqualified by virtue of provisions of Section 164 of the Companies Act, 2013 by the Respondent/RoC automatically to be restored to directorship except in accordance with law.
- (e) An affidavit of compliance of the aforesaid directions shall be filed by the Appellant 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.

— Sdr —

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

— Sdr —

28/8/18
(R.VARADHARAJAN)
MEMBER (JUDICIAL)

U.D.Mehta / K