

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH

Appeal No. 559/252/ND/2018

**IN THE MATTER OF SECTION 252 OF THE COMPANIES ACT,
2013 (18 of 2013)**

AND

IN THE MATTER OF:

LEVANT INFORMATION TECHNOLOGIES PRIVATE LIMITED

...APPELLANT

VERSUS

REGISTRAR OF COMPANIES

And another

...RESPONDENTS

Order Pronounced on: 30.08.2018

CORAM: DR. DEEPTI MUKESH

MEMBER (Judicial)

For the Appellant: -

For the Respondent: Ms. Kusum Yadav, Company Prosecutor

For Registrar of Companies

Mr. Raghvendra Singh, Adv. with

Mr. Balkishan Ladhania, Adv. for Income Tax

MEMO OF PARTIES**Levant Information Technologies Private Limited****Registered Office at D-380**

Gali No. 12C R Road Laxmi Nagar

Delhi-110092

...Appellant**VERSUS****Registrar of Companies,**

Ministry of Corporate Affairs,

4th Floor IFCI Tower,

61 Nehru Place,

New Delhi-110019

...Respondent No. 1**Commissioner of Income Tax**

Ward no. 1(3),

C.R. Building, I.P. Estate,

New Delhi – 110002

...Respondent No. 2**ORDER**

1. This appeal is filed by the company, M/s Levant Information Technologies Private Limited (for brevity the 'Company'), through its Director, Mr. Ravindra Pal Singh, under Section 252(1) of the Companies Act, 2013 (for brevity 'the Act') against the order of striking off the name of the company passed by the respondent under section 248 (1) of the Act

read with Rule 7 of Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 published on 30.06.2017 vide notification no. ROC-DEL/248(5)/STK-7/2879 by Registrar of Companies, the respondent herein.

2. The company is incorporated as a Private Limited Company under the provision of Companies Act, 1956 with the Registrar of Companies, NCT of Delhi and Haryana on 27.12.2004 having CIN U72200DL2004PTC131636.
3. The company is having registered office at D-380, Gali No. 12C R Road Laxmi Nagar, Delhi-110092.
4. Authorized share capital of the Company is Rs.1,00,000/- divided into 10,000 equity shares of Rs.10/- each and issued, subscribed and paid up share capital of the Company is Rs.1,00,000/- divided into 10,000 equity shares of Rs.10/- each.
5. The main objects of the company are:
 - i. To carry on the business as developers, designers, assemblers, repairers, services, researchers,

discoverers, maintenance engineers, buyers, sellers, publishers, importers, exporters, agents, licensors, hirers, consultants, advisors and dealers in all types of information technology and IR related, telecommunications related, communication system, consultations, education and training in IT products and related services, software tools and application and /or turnkey convergent technologies, integration software service/products computer and hardware related, network and network8ing related, internet and internet related activities including internet service providers, internet strategies and consulting relates software development either as products or on turnkey basis, e-commerce, application including e-commerce application including in particular, developing and provide e-commerce, application including e commerce application including in particular, developing and providing e-commerce platforms, developing dynamic database driven electronic commerce sites and system for sales,

fulfillment, financial and customer services and products over the internet, building/providing e-commerce portals, sell and promote products and services of clients, building portals which feature online shopping malls, business to consumer, business to business, consumer to consumer and complements of news, information selling/providing brooking, advisory services and/or intermediation in selling financial products and/or providing services, portfolio management services, depository Participants services, registrar and transfer agent services, fund accounting and custody, research, trading in commodities and commodities futures and related inline services, research in such products/services and generally to carry on the business related to computer, computing putting both in India and overseas.

And other main objects.

6. As per the notice of non-compliance of provisions of the Companies Act, 2013 in respect to filing of annual returns

and financial statements since incorporation, the name of the company was struck off in terms of provision of Section 248(1) of the Companies Act, 2013 read with Rule 7 and Rule 9 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016.

7. The Appellant has submitted that the company was in operation and the business activities were carried out by the company during the period of striking off but the reporting of such activities through Annual Returns and Financial Statement had not been filed with Registrar of Companies due to inadvertence on part of the management.
8. The appellants have stated that no notice under section 248(1) of the Act in the form of STK-1 was received by the Company or any of the directors or any person on their behalf nor was it afforded any opportunity of being heard.
9. However, without going into the controversy of the latches in following the due procedure of law by Registrar of Companies before the final act of striking off the name of the company from the register of companies maintained by

Registrar of Companies, for non-filing of statutory documents by company for the relevant period, through publication of notice on 30.06.2017, the appellants have preferred to prove with documents and records that the company was in operation and doing business during the period of striking off the name of the company as a better remedy.

10. The Appellant has brought forward the following facts about it being in operation and functional during the period of striking off:
 - i. The copy of Bank Statement of company issued by Bank of India, from 09.08.2011 to 27.12.2017, reflecting various transactions done by the company during the period of striking off and having closing balance of Rs. 4,52,213/- as on 27.12.2017.
 - ii. The copies of financial statements of the company for the financial years from 31.03.2008 to 31.03.2017. The Balance Sheet as on 31.03.2017

reflects fixed assets of Rs. 25,500/- and Profit of Rs. 1,90,499/-

- iii. The company has incurred employee benefit expense of Rs. 5,30,245/- for the financial year ending on 31.03.2017.
 - iv. The copies of Income Tax Returns filed for the assessment years 2007-08 to 2017-18. The tax paid for assessment year 2016-17 is Rs. 2,410/-
 - v. The copies of the invoices for the financial year 24.12.2007 to 04.08.2017 issued by various parties against purchase made by the company.
 - vi. The copy of Form 26AS for the financial year 2016-17, projecting the total tax deducted of Rs. 2,420/- as on 27.03.2017.
 - vii. The copies of VAT return for the financial years from 01.08.2015 to 06.04.2017.
11. It is further submitted by the Appellants that the failure to file financial statements and annual returns with the Registrar of Companies, NCT of Delhi and Haryana was due

to inadvertence on part of the management and due to lack of professional guidance and as such there was no wilful or mala-fide motive behind non-filing of the Financial Statements and Annual returns.

12. The Registrar of Companies has stated that it has no objection if the name of the Company is restored on proving by the Company that it was carrying on business or was in operation and the Company be also directed to file financial statements up to date with appropriate filing and additional fees.
13. The Income Tax Department has submitted in its report that there is no outstanding demand against the Assessee and has no objection if the company is considered for revival.
14. The Section 252(3) contemplates that one of the three conditions are required to be satisfied before exercising jurisdiction to restore company to its original name on the register of the Registrar of Companies namely:

- i. That the company at the time of its name was struck off was carrying on business.
 - ii. Or it was in operation
 - iii. Or it is otherwise just that the name of the company be restored on the register.
15. The Appellant have submitted sufficient evidence that it has been in operation since incorporation and therefore could not be termed as defunct company. Thus, 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 and such Company is able to demonstrate that there is a running business as on the date when the name was struck off and also keeping in consideration that it is just to do so can restore the name of the Company in the Register and in the interest of all stakeholders including the Appellant itself who seeks restoration of the name of the Company in the register maintained by Registrar of Companies, the company deserved to be restored.

16. Accordingly, this appeal is allowed. The Public Notice of Registrar of Companies striking the name of the company is set aside. The restoration of the company's name to the Register of Registrar of Companies is ordered subject to its filing of all outstanding documents with proper filing fees along with additional fees required under 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 subject to payment of cost of Rs. 25,000/- to be paid to Prime Minister's Relief Fund. The name of the Appellant Company shall then, as a consequence, stand restored to the Register of the Registrar of Companies, as if the name of the company had not been struck off in accordance with Section 248(1) of the Companies Act, 2013.
17. The appeal is disposed of accordingly.
18. Let the copy of the order be served to the parties.

Sd/-
(DR. DEEPTI MUKESH)
MEMBER (JUDICIAL)

