

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH

Appeal No. 519/252(3)/ND/2018

**IN THE MATTER OF SECTION 252(3) OF THE COMPANIES ACT,
2013 (18 of 2013)**

AND

IN THE MATTER OF:

LOMANI ENGINEERING PRIVATE LIMITED

And Another

...APPELLANTS

VERSUS

REGISTRAR OF COMPANIES

And Another

...RESPONDENTS

Order Pronounced on: 31.08.2018

CORAM: DR. DEEPTI MUKESH

MEMBER (Judicial)

For the Appellant: Mr. Ishwar Mohapatra.

For the Respondent: Ms. Kusum Yadav,

Company Prosecutor

Mr. Puneet Rai,

Standing Counsel of Income Tax

MEMO OF PARTIES**Lomani Engineering Private Limited**

(Through its Director, Mr. Ajay Kumar)
Having Registered Office at 3829, A/7,
Kanhaiya Nagar, Trinagar,
Delhi-110035

...Appellant No.1**Mr. Ajay Kumar,**

Resident of:1563/3,
Chowk Rai, Patel Road,
Ambala City-134003

...Appellant No.2**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**

Room No. 162-A
C.R. Building, I.P. Estate,
New Delhi – 110002

...Respondent No. 2

ORDER

1. This appeal is filed by the company, M/s Lomani Engineering Private Limited (for brevity the 'Company'), through and along with its director, Mr. Ajay Kumar, under Section 252(3) 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 with the Registrar of Companies, NCT of Delhi and Haryana on 12TH January, 2010 under the Companies Act, 1956 having CIN U35999DL2010PTC197857.
3. The registered office of the company is situated at Having Registered Office at 3829, A/7, Kanhaiya Nagar, Trinagar, Delhi-110035
4. The authorized share capital of the company is Rs.1,00,000/- divided into 10,000 equity shares of Rs.10/- each and the

issued, subscribed and paid up 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 (India and elsewhere) the business as importers, exporters, distributors, traders, manufactures, buyers, sellers, resellers, sub-contractors, improvers, processors, assemblers, job workers, agents, serving, repairing and to deal in all kinds and varieties of automobile parts and auto vehicles parts & its accessories and Components, tractor parts, automotive machinery and their machinery parts, bearing, Earth moving machine and its parts, automotive hardware, nuts and bolts and other related items, accessories and components for motor cars, motor trucks, buses, tractors, vans, Jeeps, lorries, motor cycles, scooters, and other vehicles and conveyances of all kinds and other allied product/goods.

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 appellants have stated that no notice under section 248(1) of the Act in the form of STK-1 was not received by the Company or any of the directors or any person on their behalf, before striking of the name of the company.
8. 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.

9. The Appellant has brought forward the following facts about it being in operation and functional during the period of striking off:
 - i. Copy of Bank Statement of the Company of Finacle Banking Solution from Infosys for the period 30.05.2012 to 15.04.2017 showing balance of Rs. 4,62,145.92 /- reflecting various transaction details of the company during the period of striking off.
 - ii. The copies of financial statements of the company for the financial years from 2010-11 to 2016-17. The financial statement as on 31.03.2017 reflects tangible assets of Rs. 4,598,267.01/- and revenue from operation of Rs. 8,12,880/-
 - iii. The company has incurred employee benefit expense of Rs. 3,68,770/- for the financial year ending on 31.03.2017.

- iv. The copy of List of Employees, reflecting three employees and copies of vouchers with respect to payment of salary to employees of the Company for financial year 2017.
- v. The copies of Income Tax Return for the assessment years 2016-17 and 2017-18. The copy of Income Tax Return for the assessment year 2017-18 reflects business loss of Rs. 66,395/-
- vi. The copies of invoices raised by the company during the financial year 2017 with respects to profiling charges/ fabrication charges.
- vii. The copies of electricity bills for the period April,2016 to July, 2017 and amount of electricity dues paid by the company in July, 2017 of Rs.7,413/-
- viii. The of conveyance deed executed on 04.12.2012 by HSIDC Limited in favour of the appellant company for registration of Industrial plot situated at 154, Sector-57, Phase-IV, Industrial Estate Kundli, Haryana.

10. It is further submitted by the Appellant 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.
11. 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.
12. The Income Tax Department has submitted in its report that there is no outstanding demand against the Assesse and has no objection if the company is considered for revival.
13. 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.
14. The Appellants 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.

15. 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.
16. The appeal is disposed of in terms of above order.
17. Let the copy of the order be served to the parties.

Sd/-

(DR. DEEPTI MUKESH)

MEMBER (JUDICIAL)