

IN THE NATIONAL COMPANY LAW TRIBUNAL

COURT-III

NEW DELHI

Appeal No.293/252/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:

M.J.FINVEST PRIVATE LIMITED

(APPELLANT)

VERSUS

THE REGISTRAR OF COMPANIES

(RESPONDENT)



MEMO OF PARTIES:

M.J.FINVEST PVT. LTD.
REGISTERED OFFICE AT 7A/1,
RAJPURA ROAD, CIVIL LINES,
NEW DELHI-110054
Anushka.aggarwal@abhicine.com

...Appellant Company

VERSUS

OFFICE OF REGISTRAR OF COMPANIES,
NCT OF DELHI AND HARYANA
OFFICE ADDRESS- IFCI TOWER, 4TH FLOOR, 61, NEHRU PLACE,
NEW DELHI- 110019
Roc.delhi@mca.gov.in

...Respondent

For the Appellant: Mr.Saurabh Kalia & Mr. Siddhartha
Nagpal, Advocates.

**For the respondent and
the Intervener:** Mr. Gopal Singh, Dy. ROC For ROC
Ms. Easha Kadian for Ms. Lakshmi Gurung,
St. Counsel, Income Tax Department



ORDER

Delivered on: 04.09.2018

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 07.06.2017 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 7A/1, Rajpura Road, Civil lines, New Delhi- 110054. The Company is primarily into the business to buy, underwrite, invest in, acquire, hold and deal in share, stocks, bonds, debentures etc. of companies organisations, Financing whether by way of making loans or advances to or subscribing to the capital of industrial or commercial enterprises and to make loans give guarantees and provide securities to any persons, organisation or companies.. 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 07.06.2017 and in view of demonstration of continued operation of the Company over the past years and its business being alive and running, it will seriously prejudice the interest of the Company and



the Appellants and that taking into consideration the compliances made by the Appellant in relation to other statutory authorities 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 3 and 4 of the reply, the following has been submitted:

“4. That the company had filed its Annual Returns and Balance Sheets for the financial year ended on 31.03.2011 and 31.03.2010.

5. That the subject company was strike off w.e.f. 07.06.2017 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 31.03.2011 and 31.03.2010 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 ITR FILED	DT. OF FILLING	INCOME RETURNED	TAXES PAID	OUTSTANDING DEMAND	DETAILS OF PENDING PROCESSING	DETAILS OF CASH DEPOSIT DURING POST DEMONETIZATION	ANY OTHER RELIANT INFORMATION ABOUT COMPANY BEING USED AS SHELL COMPANY OR ENTRY OPERATOR
2012-13	24.03.2014	135500/-	44050(TDS)	NIL	PROCESSED 22.12.2014	NA	-
2013-14	31.03.2015	72,340/-	24508(TDS)	NIL	PROCESSED (19.05.2016)	NA	-
2014-15	31.03.2016	2,81,830/-	121570/	NIL	NOT PROCESSED	NA	INVALID RETURN
2015-16	31.03.2017	4,70,410/-		NIL	NOT PROCESSED	NA	INVALID RETURN
2016-17	06.03.2018	NIL	212269/	NIL	IN PROGRESS	NA	AS PER ITD SYSTEM PROCESSING OF RETURN AS IN PROGRESS
2017-18	06.03.2018	NIL	NIL	NIL	IN PROGRESS	NIL	AS PER ITD SYSTEM PROCESSING OF RETURN AS IN PROGRESS



“The company M/s. M.J.Finvest Pvt. Ltd. was incorporated on 05.06.1995. As per the return filed for assessment year 2017-18, the issued and subscribed and fully paid up capital shown at Rs. 7,10,10,000/- and securities premium reserved shown at Rs. 21,55,28,550/- and sales / gross receipts of business has been shown at Nil except interest income of Rs. 3,26,519/.”

5. We have considered the plea of the Appellant on the one hand and the Respondent/RoC as well as the representations of Income Tax Department to whom notice was issued under the directions of this Tribunal. It is evident from the plea of the Appellant that the Appellant has questioned the process undertaken by the RoC in striking off the name of the Appellant Company as envisaged under Section 248 of the Companies Act, 2013 read with attendant Rules. However, the Appellant is seeking for the purpose of restoration of its name in the register as maintained by RoC is relying on the ground that the Appellant as of date is carrying on the business for which it was incorporated and it is in operation and in the circumstances it is just that the name of the Company should be restored on the register of RoC as maintained by the Respondent. In order to sustain the said plea, the Appellant has placed evidences by way of the following:



- I. *Copy of bank statement of Syndicate Bank, from 01.04.2014 to 26.02.2018 and from South Indian Bank from 01.04.2014 to 31.07.2017.*
- II. *Balance sheet for the financial year ended on 31.03.2015, 31.03.2016, 31.03.2017 indicating total revenue as on 31.03.2016 and 31.03.2017 as Rs. 2,78,259/- and Rs. 3,26,519/- respectively also indicating a total amount of Rs. 103,695,671/- as outstanding loan as at 31.03.2015.*
- III. *Copy of ITRs Acknowledgement for the Assessment Year 2017-18, 2016-17 and 2015-16 indicating Gross Total Income as Rs. 470411/- and total tax payable being Rs. 212269/- for the Assessment Year 2015-16.*
- IV. *Copy of certificate of registration dated 18.09.1998 by Reserve Bank of India in the name of the Applicant Company.*

6. As submitted by the Ld. Counsel for the Appellant, it is seen that the Appellant has been consistently complying with the other statutory formalities which is also vouched by Income Tax Department. Further it is also seen that the Appellant Company had been carrying business two years prior to striking off, all of which are evidenced from a combined reading of financial statements, Income Tax Returns and Bank Statements. Thus in the instant case the Appellant has demonstrated mitigating circumstances and taking into consideration the provisions of Section 252 of the Companies Act, 2013 which vests this Tribunal with a discretion where the Company whose name has been struck off 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 and also keeping in consideration that it is just to do so can restore the name of the Company in the register as maintained by the Registrar of Companies. 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 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



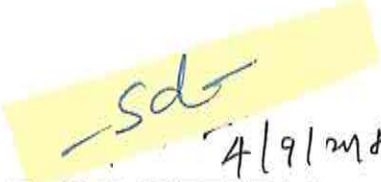
Companies Act, 2013 for the period from which there has been default with requisite charges/fees as well as additional fee/late charges.

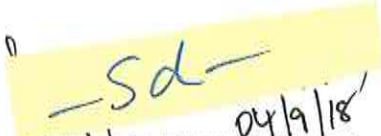
- (b) That the Appellant Company out of its funds, set apart a sum of Rs.2, 00,000/- and deposit the same with the Respondent/RoC which amount shall be for the purposes of payment of all fees/charges as contemplated in clause (a) above as well as to defray the cost and expenses of Register of Companies 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) The Appellant Company is also directed to deposit the Income Tax Dues which has been pending since 2012-13 in case of pending appeal, application for rectification.



- (f) 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.
- (g) 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.


4/9/18
(Dr. V.K. SUBBURAJ)
MEMBER (TECHNICAL)


04/9/18
(R. VARADHARAJAN)
MEMBER (JUDICIAL)

U.D.Mehta / K