

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**NEW DELHI BENCH**

**Appeal No.502/252/ND/2018**

**IN THE MATTER OF:**

M/S ESS ESS EXIM PRIVATE LIMITED .....Petitioner

VERSUS

THE REGISTRAR OF COMPANIES ...Respondent

**Order Delivered on: 07.09.2018**

**CORAM:**

**MS. INA MALHOTRA, MEMBER (JUDICIAL)**

**MS. DEEPA KRISHAN, MEMBER (TECHNICAL)**

**Present: Ms. Reema Jain, PCS for the Petitioner.**

**Ms. Kusum Yadav, Company Prosecutor, ROC.**

**ORDER**

**Per: DEEPA KRISHAN, MEMBER (T)**

1. The erstwhile director of M/S ESS ESS EXIM PRIVATE LIMITED bearing CIN No: U51909DL1997PTC245649 have filed the present appeal, invoking the provision of section 252 of the Companies Act, 2013 for restoration of the name of the petitioner company in the register maintained by the Registrar of Companies, NCT of Delhi and Haryana.

2. As per the averments, by M/S ESS ESS EXIM PRIVATE LIMITED, it was incorporated on 28.02.1997 having its registered office at 1596, 1<sup>st</sup> Floor, Bhagirath Palace, Chandni Chowk, Delhi, within the jurisdiction of this Tribunal. The main object of Company is "To carry on the business of buyer, seller, exporter, importer, assembler, fabricator, moulder, forger, designer, dealer, distributor, agency/wholesaler, retailer, to give on hire or on hore or on lease or and otherwise deals in all kinds of electricals, electronics, pollution control equipment's, power transmission and generation systems engineering, medical products, television, radios, transistors, geysers, collers, air-conditioning and refrigeration systems, computer hardware, software and their peripheral's, aerospace defence equipment, control panels, tools, dyes, autoparts, sanitary and hardware materials and fittings of all types for domestic, commercial or industrial uses or any other similar things of all kinds and sizes."

3. It is submitted by the appellant that a sweeping action was initiated by the ROC at the instance of MCA in striking of the names of several Companies who had failed to file their Statutory Returns. The appellant has last filed before the ROC, its Annual Returns and balance sheet for the financial year ended on 31.03.2010, respectively, thereby giving rise to the surmise that the business of the company was not in operation. Consequently its name was struck off by the Respondent from the Register of Companies under Section 248 of the Companies Act, 2013, upon taking steps in accordance with law

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and issuing a notification in the Official Gazette. The name of the effected companies was posted on MCA's website.

4. The appellant company admits its default in carrying out the statutory compliances, but submits that the same was on account of lack of knowledge and negligence. The copies of the audited Balance Sheets for the previous financial years have been placed on record to show that the business of the company was in operation.

6. In order to sustain the said plea, the petitioner has placed before us the following evidence:

- i. Copies of Audited Balance sheet from Financial Year 2010-11 to 2016-17.
- ii. Copies of Bank statement for the period of 10.12.2012 to 24.04.2018 of Union Bank of India and 27.09.2012 to 03.08.2013 of the Punjab National Bank.
- iii. Copies of Income Tax Returns acknowledgements for the Assessment Year 2016-17 to 2017-17.
- iv. Copies of Form 26 AS for the period 2010-11 to 2016-17.

7. The provisions 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 the 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. Further, restoration may also be directed by the Tribunal if it is just and equitable to restore the name of the company in the Register of Companies.


8. On perusal of the documents referred to in paragraph 6 above, a reasonable presumption can be inferred that the company was active at the time of being struck off from the register. The assumption of ROC that the company was not in operation was founded merely on grounds of non-filing of the Statutory Returns. The Act itself provides for redressal of these defaults. Merely to disallow restoration on grounds of its failure to file annual returns would neither be just nor equitable. As per several decisions of various Courts it should only be in exceptional circumstances that Court should refuse restoration where the company has been struck off for its failure to file annual return as that would be excessive or inappropriate penalty for that oversight.


9. Accordingly, the petition is allowed subject to payment of costs of Rs. 25,000/- to the Prime Minister Relief Fund. 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 other charges which are leviable by the respondent for the late filing of statutory returns. The name of the petitioner company shall then stand restored in the Register of the Registrar of Companies, as if its 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.

10. The direction 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 operation. Compliance of this order for restoration shall be made by the respondent with all its consequential effects within one week of compliance by the appellant.

11. The petition is disposed of accordingly.

12. Let the copy of the order be served to the parties.

  
**Deepá Krishan**  
**Member (T)**

  
**Ina Malhotra**  
**Member (J)**