

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH

Appeal No.757/252/ND/2018

IN THE MATTER OF:

SHIVAM JEWELLERS PVT.LTD.
123, 2nd Floor, Bank Enclave
New Delhi- 110092

...Petitioner

VERSUS

THE REGISTRAR OF COMPANIES

...Respondent

Order Delivered on: 29.08.2018

CORAM:

MS. INA MALHOTRA, MEMBER(JUDICIAL)

MS. DEEPA KRISHNA, MEMBER (TECHNICAL)

PRESENT- CA Sanjay Kumar Jain for the Appellant

Mr. Shobit Srivastava for the RoC

ORDER

Per Ms. Ina Malhotra (Member Judicial)

This Appeal has been filed by Shivam Jewellers Private Limited CIN:
U36911DL2003PTC121975, invoking the provision of section 252 of
the Companies Act, 2013 for restoration of the name of the appellant

company in the register maintained by the Registrar of Companies, NCT of Delhi and Haryana.

2. As per the averments Shivam Jewellers Private Limited incorporated on 28.08.2003 and has its registered office at 123, 2nd Floor, Bank Enclave, New Delhi- 110092 within the jurisdiction of this Tribunal. The main object of Company is to carry on the business of Jewellery.

3. 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 had failed to file its Annual Returns and Financial Statements though steps were taken for the Financial Year Ending 31.03.2016 during the process of the striking off their names. The negligence in complying with the statutory requirement gave 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 and issuing a notification in the Official Gazette. The names of the affected companies were posted on its website.

4. The appellant company admits its default in carrying out the statutory compliances but submits that the same was due to lack of professional guidance, inadvertence & oversight.

5. It is submitted that the appellant was actively carrying on its business all along and to substantiate the same, they have placed before us the following evidence.

- I. Copy of Audited Balance Sheet of the appellant company reflecting fixed assets revenue from operation for the years ending 31st March 2016 & 2017 as Rs. 2530/- & Rs. 9,09,450/- respectively & also Non Current Investment for the years ending 31st March 2016 & 2017 as Rs. 109,99,944/- & Rs. 4,59,51,944 respectively in the form of properties.
- II. Copy of Bank Statement issued by ICICI Bank showing various transaction.

Copies of Conveyance Deeds in their favour in respect of four properties possessed in No. DA and copy of ITR.
- III. Form 26AS for the Financial Year 2016-17 showing deposit of TDS on the income accruing to the appellant company.

6. The provisions pertaining to restoration of the name of the company has been provided in Section 252 of the Companies Act, 2013 which includes that if in the opinion of the Tribunal it is considered just and equitable to restore the name of the company in the Register of Companies, it may direct the RoC to restore the name in its Register.

7. The case of the appellant is covered by a catena of judgments where restoration has been duly allowed. As per the law laid down, a chance should be given to the company, its members and creditors to revive the company, giving them the opportunity of carrying on the business if the court is satisfied that such restoration is necessary in the interest of justice.

8. An appraisal of the documents referred to in paragraph 5 above reflects that the appellant has certain Assets and liabilities and was involved in business operations . The assumption of RoC that the company was not in operation was merely on grounds of non-filing of the Statutory Returns. The Act itself provides for redressal of these defaults. A step as stringent as what has been taken at least requires an opportunity to the appellant to take remedial measures. 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 Courts 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. It would therefore be just and equitable to direct restoration of the appellant company's name in the Register of Companies maintained by the RoC.

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 (RoC), as if its name of the company had not been struck off.

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.


Deepa Krishan

Member (T)


Ina Malhotara

Member (J)