

IN THE NATIONAL COMPANY LAW TRIBUNAL**NEW DELHI BENCH****Appeal No. 636/252/ND/2018****IN THE MATTER OF SECTION 252(1) OF THE COMPANIES ACT,
2013 (18 of 2013)****AND****IN THE MATTER OF:****NAND LAL FOODS PRIVATE LIMITED****...APPELLANT****VERSUS****REGISTRAR OF COMPANIES****And another****...RESPONDENTS****Order Pronounced on: 03.10.2018****CORAM: DR. DEEPTI MUKESH****MEMBER (Judicial)****For the Appellant:** Mr. Saurabh D. Karan Singh

Ms. Kanika Jain, Advocates

For the Respondent: Ms. Kusum Yadav, Company Prosecutor

For Registrar of Companies

Mr. Puneet Rai, Junior Standing Counsel

with Mr. Manas Tripathi, Advocate

MEMO OF PARTIES**Nand Lal Foods Private Limited****Registered Office at** A-330, Mukhmelpur,
Delhi-110036**...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 Nand Lal Foods Private Limited (for brevity the 'Company'), through its Director, Mr. Dinesh Kumar, 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 16.07.2010 having CIN U15400DL2010PTC1205985.
3. The company is having registered office at A-330, Mukhmelpur, Delhi-110036.
4. Authorized share capital of the Company is Rs.5,00,000/- divided into 50,000 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 activities of manufacturing, processing, trading and job work of all kinds of flour

mill, dal mill, food products, feed supplements and kinds of eatables etc.

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 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 Indian Overseas Bank, from 01.06.2013 to 25.03.2018, reflecting various transactions done by the company during the period of striking off and having closing balance of Rs. 820/-
- ii. The copies of financial statements of the company for the financial years from 31.03.2014 to 31.03.2017. The Balance Sheet as on 31.03.2017 reflects fixed assets of Rs. 30,22,898/- and Loss of Rs. 19,893/-
- iii. The copies of Income Tax Returns filed for the assessment years 2012-13 and 2017-18 as NIL returns.
- iv. The copies of certain vouchers concerning the expenses incurred by the appellant company during the period 01.04.2013 to 31.02.2017.
- v. The copies of invoices raised by the appellant company upon various vendors for the financial years 2013 to 2017.

- vi. The copy of sale deed, dated 14.09.2012 executed by the Haryana state industrial & infrastructure development corporation limited in favour of the appellant company, situated at Plot No. 442-B, Sector-38, Phase-I, HSIIDC, Food Park, Rai (Sonapat) admeasuring about 450 square meters for total consideration of Rs. 13,50,000/-
9. 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.
10. 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 over and above company has immovable property rights in its name and the Company be also directed to file

financial statements up to date with appropriate filing and additional fees.

11. 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.
12. 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.
13. 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.

14. 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.

15. The appeal is disposed of accordingly.
16. Let the copy of the order be served to the parties.

Sd/-

(DR. DEEPTI MUKESH)

MEMBER (JUDICIAL)