

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
COURT NO.IV, NEW DELHI.**

**Appeal No. 621/252/ND/2017**

**IN THE MATTER OF SECTION 252(1) OF THE COMPANIES ACT,  
2013 (18 of 2013)**

**PRIMERO EXPORTS PVT. LTD. ... APPELLANT**

**VS.**

**REGISTRAR OF COMPANIES DELHI ...RESPONDENTS**

**Order pronounced on: 08.10.2018**

**CORAM**

**DR. DEEPTI MUKESH  
HON'BLE MEMBER(J)**

**For Appellant**

Mr. Shantanu Kanungo & Mr.  
Ramesh Sharma, Advs.

**For Respondent**

Ms. Kusum Yadav, Company  
Prosecutor.

**For ITD**

Mr. Puneet Rai, Jr. St. Counsel  
with Mr. Manas Tripathi, Advocate

**MEMO OF PARTIES.**

**PRIMERO EXPORTS PVT. LTD.**

(Through its Director)  
Having Registered Office  
At A-28, Nizamuddin West,  
New Delhi-110013.

**...Appellant**

**VERSUS**

**THE REGISTRAR OF COMAPNIES**

4<sup>th</sup> Floor, IFCI Towers,  
61 Nehru Place, New Delhi – 110019

**...Respondent No 1**

**COMMISSIONER OF INCOME TAX,**

Chamber No. 428-429,  
Delhi High Court,  
New Delhi.

**...Respondent No 2**

**ORDER**

1. The appellant company M/s Primero Exports Pvt. Ltd. (for brevity “the company”) has filed this appeal under section 252 of the Companies Act, 2013 (hereinafter called as ‘the Act’) through its Director Mr. Mohd. Wasif against the order of the Registrar of Companies (ROC), NCT of Delhi and Haryana dated 07.06.2017. The order mentioning the name of the Company at Serial No. 22864 with CIN U51909DL2011PTC219236 was duly published in Official Gazette on 30.06.2017. The name of the company has been struck off from the Register of Companies maintained by the respondent ROC, under section 248(5) of the Act read with Rule 7 and Rule 9 of Companies (Removal of Name of the Companies from the Register of the Companies) Rules, 2016.
2. It is stated that the company is incorporated as a Private Limited Company with the Registrar of Companies, NCT of Delhi and Haryana on 16<sup>TH</sup> May ,2011 under the Companies Act, 1956 having CIN U51909DL2011PTC219236.
3. The registered office of the company is situated at A-28, Nizamuddin West, New Delhi-110013.

4. Authorized share capital of the Company is Rs.1,00,000/- divided into 10,000 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 of buying, selling, reselling, exporting and trading of all kinds of goods finished, semi-finished, raw material items, articles, merchandiser, products such as agricultural, Leather Product, Furniture items, artificial jewellery, industrial chemical or marine, stones, pieces of arts, antiques, handicrafts, machinery, equipment, capital goods and any other item capable of purchasing, selling, importing, exporting and trading and to be appointed as agents and/or distributors on commission, allowance, retainer ship, incentive basis.  
  
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 appellants have stated that no notice under section 248(1) of the Act in the form of STK-1 was received by the Company or any of the directors or any person on their behalf and hence not afforded any opportunity of being heard before striking of the name of the company.

9. 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.
10. The Appellant has brought forward the following facts about it being in operation and functional during the period of striking off:
  - a. The copy of Bank Statement of company issued by State Bank of India, from 02.04.2016 to 19.09.2017, reflecting various transactions done by the company during the period of striking off and having closing balance of Rs. 1,11,467/-

- b. The copies of financial statements of the company for the financial years from 31.03.2013 to 31.03.2016, reflecting Profit of Rs. 13,855/-.
  - c. The copies of Income Tax Returns filed for the assessment years 2013-14 to 2016-17. The tax paid for assessment year 2016-17 is Rs. 7,880/-
  - d. The copies of DVAT return for the financial years 2016 & 2017.
11. 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.
12. 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.
13. 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.
  14. 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:
    - a. That the company at the time of its name was struck off was carrying on business.
    - b. Or it was in operation
    - c. Or it is otherwise just that the name of the company be restored on the register.
  15. 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.

16. 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.

17. The appeal is disposed of accordingly.
18. Let the copy of the order be served to the parties.

Sd/-

**(DR. DEEPTI MUKESH)**  
**MEMBER (JUDICIAL)**