

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH

Appeal No.649/252/ND/2018

IN THE MATTER OF:

RKS POWER SYSTEM PRIVATE LIMITED.
WZ-49, 2nd Floor, Street No.2, Sadh Nagar
Palam Colony, New Delhi- 110045

...Petitioner

VERSUS

THE REGISTRAR OF COMPANIES

...Respondent

Order Delivered on: 07.09.2018

CORAM:

MS. INA MALHOTRA, MEMBER(JUDICIAL)

PRESENT- CS Rohit, Abdul Quadir & Pankaj for the Appellant
Mr. Shobit Srivastava for RoC with Ms. Kusum Yadav Company
Prosecutor

ORDER

Per Ms. Ina Malhotra (Member Judicial)

This Appeal has been filed by M/S RKS Power System Private Limited CIN: U40105DL2012PTC234089, 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 RKS Power System Private Limited was incorporated on 09.04.2012 and has its registered office at WZ-49, 2nd Floor, Street No-2, Sadh Nagar, Palam Colony, New Delhi- 110045 within the jurisdiction of this Tribunal. The main object of Company is to carry on the business of electrical equipments & accessories.

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 after the Financial Year Ending 31.03.2015 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 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. In order to corroborate its business operation the petitioner has placed before us the following evidence:

- I. Copy of Audited Balance Sheet of the appellant company reflecting revenue from operation for the years ending 31st March 2016 & 2017 as Rs. 41,62,613/- & Rs. 15,10,456/- respectively & also Cash & Cash equivalents. In addition it has Trade Receivables, Short Term Loans & other assets as well as liabilities to be liquidated.
- II. Copy of Bank Statement issued by South India Bank showing various business transactions.
- III. Copy of filed VAT Return.
- IV. Copy of Form 26AS showing TDS deposited on the income accruing to the appellant company.
- V. Copy of the work orders received from the various clients.

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. A perusal of the documents referred to in paragraph 5 above, reflects that the appellant has been in business and has certain Assets & liability which necessitate restoration of its name in the Register of Companies. 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.

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.

Sd/-

Ina Malhotara

Member (J)