

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH - III**

**CP- 336/ND/2017**

**CORAM: SHRI R. VARADHARAJAN, MEMBER (JUDICIAL)**

**DR. V.K. SUBBURAJ, MEMBER (TECHNICAL)**

**IN THE MATTER OF SECTION 252 OF THE COMPANIES ACT, 2013.**

**IN THE MATTER OF:**

**RYANUS CONSULTING PRIVATE LIMITED**

**(Petitioner Company)**

**VERSUS**

**THE REGISTRAR OF COMPANIES**

**(Respondent)**



**MEMO OF PARTIES:**

**RYANUS CONSULTING PRIVATE LIMITED**  
**CIN: U74140DL2007PTC171986**  
**211-A, Pocket- A, Mayur Vihar, Phase-2,**  
**New Delhi – 110091**

.....Petitioner

**Gaurav Sachdeva**  
**House No. 1166, Sector-37-B,**  
**Chandigarh- 160036**

.....Petitioner

**VERSUS**

**THE REGISTRAR OF COMPANIES**  
**4<sup>th</sup> Floor, IFCI Towers,**  
**Nehru Place, New Delhi – 110019**

.....Respondent

**For the Petitioner**

**: Mr. Sunpreet Singh, Company Secretary**

**For the Respondent / ROC IT : Mr. Manish Raj,**  
**(Company Prosecutor for ROC)**  
**Ms. Lakshmi Gurung,**  
**(Standing Counsel, Income tax Department)**



## ORDER

Delivered on: 20.8.2018

1. This is an Appeal/ Petition which has been preferred u/s 252 of the Companies Act, 2013 by the Petitioner Company in relation to an order of striking off the name of the Petitioner Company passed by the Respondent with effect from 30.6.2017 under the provisions of Section 248 of the Companies Act, 2013. Ld Counsel for the Petitioner represents that the Petitioner Company was incorporated under the provisions of Companies Act, 1956 and has its registered office at 211-A, Pocket A, Mayur Vihar Phase 2, New Delhi 110091, India. The Company is engaged in the business of developing, trading, selling of computer software in India and abroad and that they are carrying on services since incorporation and has been carrying on the said business even as of today. It is submitted by the Ld. Counsel that the non-filing of documents were a bonafide mistake on the part of the petitioner company, but it now submits that it is ready to make the requisite filings for the revival of the company. However, in view of non- filing of the Annual returns and Balance Sheets, the name of the Petitioner company from the register as maintained by the ROC has been struck off in the meanwhile on and from



30.06.2017 and in view of demonstration of continued operation of the Company over the past several years and presently too it will seriously prejudice the interest of the Company and the Petitioner and that taking into consideration the compliances made by the Petitioner in relation to other statutory authorities and since no one will be prejudiced if the Appeal is allowed, but on the other hand, the interest of all concerned including shareholders/creditors, employees of the Company will be seriously affected if the appeal is not allowed and the name of the company in the register of the ROC is not restored.

2. Upon notice to the Respondent, ROC has filed its reply to the above said Appeal dated 12.2.2018 and has stated that -
  - a) The Company may kindly be directed to prove that it was carrying on business or was in operation and that it is just that the name of the company be restored to the register.
  - b) The company may kindly be directed to file the financial statements up to date in case if the prayer is granted.
  - c) Any such order which this Hon'ble Tribunal may deem fit and proper.
  
3. Upon notice ordered to the Income Tax Department, the Revenue has filed its report dated 15.2.2018 and upon consideration of the Appeal, it is observed and it has brought forth the filing of Income Tax Returns & Tax dues as follows-



"As per the latest ITR filed by the Company for Assessment Year 2016-17 total Income Rs 18390/-. No income tax proceedings or demands are pending in the case of the said assessee."

4. We have considered the plea of the Petitioner on the one hand and the Respondent/RoC as well as the representations of Income Tax Department to whom notice was issued under the directions of this Tribunal. It is evident from the plea of the Petitioner that the Petitioner has not questioned the process undertaken by the RoC in striking off the name of the Petitioner Company as envisaged under Section 248 of the Companies Act, 2013 read with attendant Rules. However, the Petitioner is seeking for the purpose of restoration of its name in the register as maintained by RoC is relying on the ground that the Petitioner as of date is carrying on the business for which it was incorporated and it is in operation and in the circumstances, it is just that the name of the Company should be restored on the register of RoC as maintained by the Respondent. In order to sustain the said plea, the Petitioner has placed overwhelming evidences by way of the following:

- i. Copy of Bank statement of accounts number 02932000004138 and 2112106342 issued by Kotak Bank, showing transactions details and status of Company as active for the period 01.4.2013-31.3.2018 and from 1.4.2017 to 25.1.2018.



- ii. Copy of Audited Annual Accounts for the year 2014 to 2016 which includes cash flow statements, Balance Sheet, Profit and Loss account statement, Schedules of Balance Sheet.
  - iii. Copy of Income Tax Returns for the Assessment Year 2014-2015 of Rs. 163484, 2015-16 of Rs. 81732 and for the year 2016-17 of Rs. 42793.
5. Perusal of the documents annexed, along with the appeal, it is seen that the appellant has enclosed form 26AS being the TDS deposited to its credit. Predominantly in relation transactions as contemplated u/s 194 J and 194 C of the Income Tax act, 1961, being income in relation to payment made to a resident, in a fiscal year (higher than Rs 30,000), amount charged as professional services fee or technical service fee and Payments made to any person who is a resident contractor or a sub-contractor in pursuance of work in accordance to the contract from Chronos Richardson India Pvt. Ltd., Samar Singh Education Charitable Trust, Ingram Micro India Private Limited, Global Talent Track Private Limited, Bagpet Paper Private Limited, NIPA International Private Limited, CHW Forge Private Limited, Texmaco Rail & Engineering Limited, Techno Plastic Industries, Indian Institute of Technology Roorkee, Andritz Hydro Private Limited, Dassault Systems India Private Limited, Kotak Mahindra Bank Limited as well as from other customers of the appellant. The TDS certificate have been filled for Financial year 2013-14, 2014-15, 2015-16 and 2016-17



correlating with the Assessment Year 2014-15, 2015-16, 2016-17 and 2017-18 respectively. From the above, it is evident that the appellant for the 2 years immediately preceding the date of striking off has been carrying on business/ operations. In addition to form 26 AS, as referred to above the appellant has also filed the documents referred in para 4 supra.

6. As submitted by the Ld. Counsel for the Petitioner, it is seen from the records as listed above that the Appellant has been functioning during the period when the name of the company was struck off. However, even though it will not absolve the Appellant/ Petitioner from filing the necessary returns and documents and adhere to the provisions of Companies Act, 2013 as an onus is placed on the Appellant/ Petitioner to strictly comply with the provisions of Companies Act, 2013 without any let, in the instant case the Petitioner has demonstrated mitigating circumstances. Thus, taking into consideration the provisions of Section 252 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 the stakeholders including members of the Petitioner, its employees as well as the revenue and the petitioner

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itself who seeks restoration of the name of the Company in the register being maintained by RoC and in the abovesaid circumstances the Appeal/Petition is allowed subject to the following directions namely:

The Appellant/ Petitioner Company shall:

- (a) Within a period of 15 days from the restoration of the Appellant Company's name in the register being maintained by the RoC, the appellant/ petitioner will file inter alia its annual returns and balance sheets as well other compliances statutorily required to be made under the Companies Act, 2013 for the period from which there has been default with requisite charges/fees as well as additional fee/late charges.
- (b) That the Appellant Company out of its funds, set apart a sum of Rs.2,00,000/- and deposit the same with the Respondent/RoC which amount shall be for the purposes of payment of all fees/charges as contemplated in clause (a)above as well as to defray the cost and expenses of Register of Companies incurred in striking off, within a period of one month from the date of this order. In case of any amount payable in excess of the sum specified towards defraying the cost incurred by the Respondent/ROC and towards other amounts as



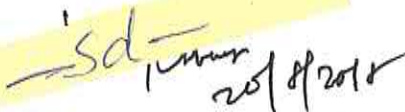
are required to be paid by the Company statutorily, the same shall be remitted by the Company. Any excess amount left after appropriating for all the above shall be meticulously returned by Respondent to the Appellant.

- (c) Till all compliances are made by the Appellant Company, the Appellant Company shall not alienate or dispose of any of its valuable assets.
  
- (d) It is further observed that by virtue of this order of restoration of the name of Appellant/ Petitioner Company in the register it will not entitle the Directors of the Company whose names in case have been disqualified by virtue of provisions of Section 164 of the Companies Act, 2013 by the Respondent/RoC automatically to be restored to directorship except in accordance with law.
  
- (e) An affidavit of compliance of the aforesaid directions shall be filed by the Appellant within a period of 2 months from the date of this order.



- (f) Further this order allowing the appeal shall also not circumscribe the power of the respondent to proceed against the Appellant Company and its Directors as mandated for alleged late filing of any forms, documents, returns and such other compliance under the provisions of Companies Act, 2013.

The Appeal is disposed of accordingly.

 20/08/18

(Dr. V.K. SUBBURAJ)  
MEMBER (TECHNICAL)

 20/08/18

(R. VARADHARAJAN)  
MEMBER (JUDICIAL)

U.D. Mehta / D