

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH

Appeal No. 155/252/PB/2018

**IN THE MATTER OF SECTION 252(3) OF THE COMPANIES ACT,
2013 (18 of 2013)**

AND

IN THE MATTER OF:

SUNSHINE TEXTILE PRIVATE LIMITED

...APPELLANT

VERSUS

REGISTRAR OF COMPANIES

And another

...RESPONDENTS

Order Pronounced on: 12.09.2018

CORAM: DR. DEEPTI MUKESH

MEMBER (Judicial)

For the Appellants: Mr. N. K. Sharma, Advocate

For the Respondent: Mr. Gopal Singh,

Deputy Registrar of Companies

Ms. Esha Kadian for Lakshmi Gurung

Standing Counsel for Income Tax

MEMO OF PARTIES**Sunshine Textile Private Limited**

Through its Directors Mr. Subhash Chander Chouhan and Mr. Manipuzha Kuttanpillai Rajan

Registered office at: B-2,

Phase-1, Mayapuri,

New Delhi-110064

...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. Present appeal is filed by the company, M/s Sunshine Textile Private Limited (for brevity the 'Company'), through its Directors, Mr. Subhash Chander Chouhan and Mr. Manipuzha Kuttanpillai Rajan, 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 Registrar of Companies, the respondent herein, 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.

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 18.02.1994 having CIN U51311DL1994PTC057462.
3. The company is having registered office at B-82, Phase-1, Mayapuri, New Delhi-110064
4. Authorized share capital of the Company is Rs.10,00,000/- divided into 1,00,000 equity shares of Rs.10/- each and issued, subscribed and paid up share capital of the Company is Rs.20 /- divided into 2 equity shares of Rs.10/- each.
5. The main objects of the company are:
 - i. To vary on the business of buying, selling, import, ginning, pressing, spinning, combing, cleaning, preparing, packing,

weaving, manufacturing, bleaching, dyeing, printing or processing of cotton, yarn, linens, cloths, fabrics, jute, wool, silk grass, hemp, and other stable fiber material whether synthetic, artificial or natural textile substitute for all or any of them and to treat and utilize any waste arising from any such manufacture, production or process.

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 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, before striking of the name of the company.

8. 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 appellant has 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.
9. 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 of Indian Overseas Bank, from 22.01.2016 to 05.04.2017, showing few transactions but having NIL balance.
 - ii. The copies of financial statements of the company for the financial years from 2009 to 2017. The non-current investments made in Gold Cause Private

limited reflected in Balance Sheets from the year 2015 onwards are of Rs. 3,00,00,000/-

- iii. The copies of Income Tax Return the assessment years 2013-14 to 2017-18 as NIL Returns.
- iv. The copies of certificate of deduction of tax by the company of various entities under section 203 of Income Tax Act, 1961 for the period 01.04.2003 to 31.03.2004.
- v. The copy of Sale deed dated 28.03.1994 in favour of the company with respect to plot of land situated at Block No. 184, Mojekaranj, Mandvi, Surat, Gujarat reflecting consideration of Rs. 1,92,500/- paid by the company and the receipt of fees paid dated 23.08.2018 for making an application for registration of deed with sub registrar Mandvi, for the said property.
- vi. The copy of conveyance deed dated 21.03.2003 in between the lessor and the company duly registered with Delhi development authority for residential plot of land situated at Plot No. 2 in Block No RD 32,

Adaresh Bhawan CHBSLTD, Punjabi Bagh, New Delhi admeasuring about 199.42 square meters and the property tax receipt, dated 15.06.2015 paid to Municipal Corporation of Delhi.

10. It is further submitted by the Appellant 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.
11. 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.
12. The Income Tax Department has submitted in its report that there is outstanding demand of Fringe Benefit Tax against the Company of Rs. 35,269/- for Assessment Year 2006-07 and

of Rs. 6,750/- for Assessment Year 2010-11. However, Income Tax Department has no objection if the company is considered for revival.

13. The grounds contemplated under section 252 of Companies Act, 2013, namely, that of the company carrying on business or was in operation at the time of striking off its name, and where it appears “just” to the adjudicating authority that the name of the company is to be restored to the Register of Companies. It is also seen from the perusal of the provisions under Section 252(3), that if Tribunal is of the opinion it is “just” that the name of the company is to be restored to the register of companies maintained by Registrar of Companies, such orders can be passed for the name of the company to be so restored. For reference, the provisions of Section 252(3) of the Companies Act, 2013 is extracted hereunder:

252(3) “ *If a company, or any member or creditor or workman thereof feels aggrieved by the company having its name struck off from the register of companies, the Tribunal on an application made by the company, member, creditor or*

workman before the expiry of twenty years from the publication in the Official Gazette of the notice under subsection (5) of section 248 may, if satisfied that the company was, at the time of its name being struck off, carrying on business or in operation or otherwise it is just that the name of the company be restored to the register of companies, order the name of the company to be restored to the register of companies, and the Tribunal may, by the order, give such other directions and make such provisions as deemed just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off from the register of companies.

14. Further, relying on the following Judgements, namely, order of the Honourable High Court of Guwahati in Company Petition 24/2012 dated 05.06.2017; order of Honourable High Court of Bombay in Company Petition No. 6 of 1981 dated 06.04.1994, order of Honourable High Court of Delhi in Company Petition No. 174/2013 dated 02.12.2013; and order of Honourable High Court of Delhi in Company Petition No. 200 of 2011; order of the NCLT New Delhi Bench in Company

Appeal No. 127/252//ND/2018 dated 25.04.2018, which in brief reflects the following:

In aforementioned decisions, while construing Section 560(6) of the Companies Act, 1956 which is *pari materia* to present Section 252(3), as extracted above of the Companies Act, 2013, it has been held that the word “just” has to be understood in the background of the specific language of the sub-section not on the basis of the principle of *eiusdem generis*. Further, the aforementioned judgements therein elucidates that apart from the situation in which the company court can order restoration namely (i) when the company was carrying on business or was in operation at the time of striking off its name there exists an alternative situation (ii) where it appears “just” to the company court that the name of the company be restored to the register and that the rule of *eiusdem generis* will not apply because of the presence of the words “or otherwise” between the words thereby providing for the following two types of situations. Further, the grounds for restoration as earlier provided Section 560(6) of Companies Act, 1956 has been retained as such without any change by

the Legislature from which the intention of Legislature can be clearly gathered in the present dispensation as well. Furthermore, it is also seen that where litigations are pending and where immovable property rights are involved and in the instant case also the facts vouch for the similar decision, it is only proper that the name of the company be restored to the Register of Companies. Hence, there exists a “just” ground for the restoration of the name of the appellant company in the Register of Registrar of Companies.

15. 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 Appellants 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.

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

Sd/-

(DR. DEEPTI MUKESH)
MEMBER (JUDICIAL)