

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

**Appeal No. 224/252/(PB)/2018**

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

**AND**

**SCOAT PERFORMANCE COATINGS PVT. LTD.  
And others**

**... APPELLANTS**

**VERSUS**

**REGISTRAR OF COMPANIES  
And others**

**...RESPONDENTS**

**CORAM**

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

**Order pronounced on: 28.09.2018**

**For Appellant :**

Mr. Anshuj DHINGA, CS,  
Mr. Rahul AHUJA, Advocate,  
Mr. Kartik SETHI, Advocate

**For Respondent :**

Ms. Kusum YADAV, Coy. Prosecutor.  
Ms. Vibhuti MALHOTRA, St. Counsel with  
Ms. Kriti SINHA, Advocate for Income Tax



**MEMO OF PARTIES**

1. **Scoat Performance Coatings Pvt. Ltd.**  
Regd. Office: HN 52, Krishan Kunj Extn.II  
Laxmi Nagar, New Delhi-110092 **...Appellant No.1**
  
2. **Mr. Pramod Kumar Sharma**  
R/O H.No. 192, Vill. Manakpur,  
Ghaziabad, UP-201001. **...Appellant No.2**
  
3. **Mr. Subodh Kumar Sharma**  
R/O H.No. 192, Vill. Manakpur,  
Ghaziabad, UP-201001. **...Appellant No.3**
  
- VERSUS**
  
4. **Registrar of Companies,**  
NCT of Delhi & Haryana  
Haing its office at 4<sup>th</sup> Floor,  
IFCI Tower, 61, Nehru Place,  
New Delhi-110019. **...Respondent No.1**
  
5. **Principal Commissioner of Income tax,**  
DEPARTMENT OF INCOME TAX  
C.R. Building, ITO, New Delhi – 110002 **...Respondent No.2**



**ORDER**

1. The appellant company M/s Scoat Performance Coatings Pvt. Ltd. (for brevity the 'Company') has filed this appeal under section 252(1) of the Companies Act, 2013 through and along with its two Directors Mr. Pramodh Kumar Sharma and Mr. Subodh Kumar Sharma, against the order dated 01.09.2017 of the Registrar of Companies (ROC), NCT of Delhi and Haryana, vide which name of the Company appearing at serial No. 19400 CIN U51909DL2003PTC121783 was struck off 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 published on 30.06.2017 vide notification no. ROC-DEL/248(5)/STK-7/2879 by Registrar of Companies, the respondent herein.
2. It is stated that the company is private company incorporated as a Private Limited Company with the Registrar of Companies, NCT of Delhi and Haryana on 14<sup>th</sup> August, 2003 under the Companies Act, 1956 having CIN U51909DL2003PTC121783.



3. The registered office of the company is situated at Regd. Office:  
HN 52, Krishan Kunj Extn.II, Laxmi Nagar, New Delhi-110092.
4. The Memorandum and Articles of Association of the company is annexed at Annexure-1.
5. The main objects of the company are:
  - i. To carry the business of trading and application of protective coating of material and chemicals for machines and vehicles and also import-export, buy, sell, trade and deal in materials equipment/instruments used or required for business.  
  
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

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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.

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 Punjab and Sind Bank, from 29.12.2015 to 13.10.2017, having closing balance of Rs.26,82,184/- and copy of statement of Allahabad Bank from 22.01.2018 to 01.05.2018, having closing balance of Rs. 53,10,847/-, reflecting various transactions done by the company during the period of striking off.
- b. 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. 33,077/- and Profit of Rs. 1,02,861/-
- c. The copies of Income Tax Returns filed for the assessment years 2007-08 to 2017-18. The tax paid for assessment year 2016-17 is Rs. 13,000/-
- d. The copies of VAT return for the assessment years 2016-17 and 2017-18.

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- e. The copy of invoices raised by the appellant company upon various vendors pertaining to 2016-17 financial years.
- f. The copy of GST registration certificate having GSTIN 09AAICS0626F1ZG issued on 22.09.2017
- g. The copy of GST returns filed quarterly in Form GSTR 1 and GSTR-3B for financial year 2017-18 having GSTIN 09AAICS0626F1ZG.

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:
- 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.
15. The Appellant have submitted 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.

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