

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

Appeal No.311/252/PB/2018

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

In the matter of:

TECHNICOOOL MARKETING PRIVATE LIMITED

...APPELLANT

Versus

REGISTRAR OF COMPANIES

And others

...RESPONDENTS

CORAM

**DR. DEEPTI MUKESH,
HON'BLE MEMBER (JUDICIAL)**

Order pronounced on: 03.10.2018

For the Appellant

Mr. Tarun Saini, CS

Mr. Himanshu Sharma, CS

For the Respondent

Ms. Kusum Yadava,

Company Prosecutor for ROC

Ms. Lakshmi Gurung, standing
counsel with Mr. Divey Kant,

Advocate for Income Tax

MEMO OF PARTIES.

Technicool Marketing Private Limited

Registered Office at Property No. 45,
First Floor, Phase II, Okhla Industrial Area,
New Delhi-110020

...Appellant

VERSUS

The Registrar of Companies

NCT of Delhi and Haryana,
4th Floor, IFCI Tower,
61, Nehru Place, New Delhi-110019.

...Respondent No.1

Income tax Officer,

Ward-3(3),
Room No. 392, CR Building,
IP Estate, New Delhi-110002.

...Respondent No.2

ORDER

1. This appeal is filed by the company, M/s Technicool Marketing Private Limited (for brevity the 'Company'), through its Director, Mr. Sanjeev Hajela, 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 the respondent 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 by Registrar of Companies, the respondent herein.

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 17.09.2010 having CIN U74900DL2010PTC208412.
3. The company is having registered office at Property No. 45, First Floor, Phase -II, Okhla Industrial Area, New Dlehi-110020.
4. Authorized share capital of the Company is Rs.1,25,000/- divided into 12,500 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 conduct the business of marketing, buying, selling and distribution , import , export or otherwise dealing and trading consumer goods, automobiles,

communication devices, electronic and electrical products.

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 and lack of fund availability.
8. 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 issued by Kotak Mahindra Bank, from 01.02.2016 to 01.02.2018, reflecting various transactions done by the company during the period of striking off and having closing balance of Rs. 2,414/-
 - ii. 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 cash and cash equivalents of Rs. 3,59,374/- and Loss of Rs. 15,937/-
 - iii. The copies of Income Tax Returns filed for the assessment years 2016-17 and 2017-18 as NIL returns.
9. It is further submitted by the appellant that the company had given an advance of Rs. 17,00,000/- during the financial year 2012-13 to one of its creditors namely 'Trans Solar Technologies' owned by Mr. Srinivassan for the purposes of its businesses, but the said creditors defaulted in his commitments and did not return the advance as per

the terms and conditions and eventually the company had gone in financial crunch and started failing in all its business procedures, plans and programme. In pursuant to this the company had filed a case against the said defaulting creditor in Rohini Court in Delhi bearing case no. 5056/1/2015, which was transferred to Tis Hazari Court, and is still pending.

10. 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.
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 no outstanding demand against the Assessee and has no objection if the company is considered for revival.

13. 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.

14. 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.

10. 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. Further it is seen that due to pending aforesaid litigation, the survival and functioning of the company was jeopardized. It is established from various judgements that

pending litigations can be considered as valid and just reason to revive the company as cited in order of the Honourable High Court of Delhi in Company Petition 406/2009 dated 04.06.2010; Honourable High Court of Guwahati in Company Petition 24/2012 dated 05.06.2017; order of Honourable High Court of Delhi in Company Petition No. 200 of 2011 dated 08.02.2012, and order of Honourable High Court of Delhi in Company Petition No. 185/2008 dated 21.04.2010, which held as under:

“when a litigation is pending by or against a company, it is only proper that its name be restored to the Register to enable the matter to be carried to its logical conclusion”

Hence, there exists a “just” ground for the restoration of the name of the appellant company in the Register of Registrar of Companies.

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)