

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

**Appeal No.480/252/ND/2018**

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

**WINTRADE TRADING PVT. LIMITED**

**...APPELLANT**

**VERSUS**

**REGISTRAR OF COMPANIES**

**...RESPONDENT**

**CORAM**

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

**Order pronounced on: 20.09.2018**

**For the Appellant**

Mr. Pawan Kumar &  
Mr. Awnish Kumar, Advs.

**For Respondent**

Ms.Kusum Yadav, Coy. Prosecutor.

**For Income Tax Dept.**

Mr. Ajit Sharma, Mr. Afnan Siddiqui &  
Mr. Ashutosh Senger, Advs.

**MEMO OF PARTIES.**

**1. Wintrade Trading Pvt. Ltd.**

Regd. Office E-15, 3<sup>rd</sup> Floor,  
South Extn. Part-II  
New Delhi-110049.

...Appellant No.1

**2. Sharad Somany,**

R/o. Farm No. 43,  
3, Cassia Avenue,  
Westend Green Farms,  
Rajokri, New Delhi-110038.

...Appellant No. 2

**3. Shri Radhakrishan Gupta,**

R/o. H.No. 15-, Pocket 'A'  
MIG Flats, Outer Ring Road,  
Vikaspuri Extension,  
New Delhi-110018.

...Appellant No. 3

**VERSUS**

**The Registrar of Companies**

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

...Respondent No. 1

**Principal Commissioner of Income Tax**

Department of Income Tax  
C.R. Building, ITO, New Delhi – 110002

...Respondent No. 2

**ORDER**

1. The instant appeal has been filed by M/s Wintrade Trading Pvt. Ltd. through and along with its two Directors Mr. Sharad Somany and Mr. Radhakrishan Gupta under section 252 of the Companies Act, 2013 (hereinafter called as 'the Act') against the order of the Registrar of Companies (ROC), NCT of Delhi and Haryana dated 27.04.2017. The order mentioning the name of the Company at Serial No.22369 with CIN No. U51392DL2000PTC106852 was duly published in Official Gazette on 30.06.2017. The name of the company has been struck off from the Register of Companies maintained by the respondent ROC, 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.
2. It is stated that the company is incorporated as a Private Limited Company with the Registrar of Companies, NCT of Delhi and Haryana on 18<sup>th</sup> July, 2000, under the Companies Act, 1956 having CIN U51392DL2000PTC106852.



3. The registered office of the company Wintrade Trading Pvt. Ltd. Regd. Office E-15, 3<sup>rd</sup> Floor, South Extn. Part-II, New Delhi-110049.
4. Authorized share capital of the Company is Rs.2,00,000/- divided into 20,000 equity shares of Rs.10/- each and issued, subscribed and paid up share capital of the Company is Rs.1,50,000/- divided into 15,000 equity shares of Rs.10/- each.
5. The main objects of the company are as follows:
  - i. To purchase, sell, import, export and distribute of All types of sanitary ware, ceramic ware and granite household articles like kitchen sinks, bath tubs and other granite architectural pieces.  
  
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.
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. 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 Kotak Mahindra Bank from 04.04.2015 to 22.12.2017, having closing balance of Rs. 34,093/- and ICICI Bank from 01.04.2017 to 27.09.2017, having closing balance of Rs. 30,776/-, 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 31.03.2012 to 31.03.2017. The Balance Sheet as on 31.03.2017 reflects cash and cash equivalents of Rs. 47,243/- and Profit of Rs. 25,046/-.
- c. The copies of Income Tax Returns filed for the assessment years 2014-15 to 2017-18. The tax paid for assessment year 2016-17 is Rs. 75,000/-.

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- d. The copy of lease deed, dated 30.08.2000 between Mr. Amrit Pal Kaur as lessor and the appellant company, as lessee situated at E-15, south extension part-II, New Delhi admeasuring about 454 square feet for the term of nine years for monthly lease rental of Rs. 1,100/-, though the lease has now expired.
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:
  - a. That the company at the time of its name was struck off was carrying on business.
  - b. Or it was in operation
  - c. 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.

— S/D —

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

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