

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH

Appeal No.106/252/ND/2018

IN THE MATTER OF:

ZYNE SOLUTION PRIVATE LIMITED

...Petitioner

HNo 375/1-E, F/F, Old No.-2

KH No.-146 Gali No.3

East Babarpur, New Delhi-110032

VERSUS

THE REGISTRAR OF COMPANIES

...Respondent

Order Delivered on: 24.04.2018

CORAM:

MS. INA MALHOTRA, MEMBER(JUDICIAL)

MS. DEEPA KRISHNA, MEMBER (TECHNICAL)

PRESENT- Mr. Sourabh Batra (for the Appellant), Mr. Manish Raj (for the RoC)

ORDER

Per Ms. Ina Malhotra (Member Judicial)

This is an Appeal/ Petition which has been filed by Zyne Solution Private Limited CIN: U72400DL2012PTC230399, invoking the provision of section 252 of the Companies Act, 2013 for restoration of the name of the petitioner company in the register maintained by the Registrar of Companies, NCT of Delhi and Haryana.

2. As per the averments, Zyne Solution Private Limited was incorporated on 23.01.2012, and has^{its} registered office at Old No.-2, KH No.-146, Gali no.3, East Babarpur, Delhi- 110032 within the jurisdiction of this Tribunal. The main object of Company is to carry out the business of running a computer centre and to offer consultancy, data processing and other computer related services.

3. A sweeping action was initiated by the RoC at the instance of MCA in striking of the names of several Companies who had failed to file their Statutory Returns. The appellant has failed to file its Annual Returns and Financial Statement after the financial year ending 31.03.2013, thereby giving rise to the surmise that the business of the company was not in operation. Consequently its name was struck off by the Respondent from the Register of Companies under Section 248 of the Companies

Act, 2013, after taking steps in accordance with law and issuing a notification in the Official Gazette. The name of the effected companies was posted on its website.

4. The appellant company admits its default in carrying out the statutory compliances, but submits that the same was on account of lack of knowledge and negligence. The copies of the audited Balance Sheets for the previous financial years have been relied upon to show that the business of the company was in operation.

5. In order to sustain the said plea, the petitioner has placed before us the following evidence:

- i. Form 26AS for the Financial Year 2016-17 showing deposit of TDS on the income generated by the appellant. During the impugned period.
- ii. Income Tax Returns Substantiating payment of Tax.
- iii. Copy of Bank statement issued by HDFC Bank, Vasant Vihar, Delhi showing transactions details from 01.04.2016 to 31.03.2017.
- iv. List of invoices of ongoing job work undertaken.
- v. The Statutory Auditor's Report for the Financial Years 2015, 2016 reflects that the appellant company has long term loans and

advances, trade receivables and payable cash and cash equivalents, to Corroborate its running business.

6. The provisions pertaining to restoration of the name of the company has been provided in Section 252 of the Companies Act, 2013 and the same envisages that if the Tribunal is of the opinion that the removal of the name of the company from the register of the companies is not justified in view of the absence of any of the grounds on which the order was passed by the Registrar, or if in the opinion the Tribunal it is just and equitable, it may order restoration of the name of the company in the register of companies (RoC).

7. The case of the appellant is covered by a catena of judgments where restoration has been duly allowed. As per the law laid down, a chance should be given to the company, its members and creditors to revive the company, giving them the opportunity of carrying on the business if the court is satisfied that such restoration is necessary in the interest of justice.

8. On perusal of the documents referred to in paragraph 5 above, a reasonable presumption can be inferred that the company was active before being struck off from the register. The assumption of RoC that the company was not in operation was founded merely on grounds of non-filing of the Statutory Returns. The Act itself provides for redressal of these defaults. A step as stringent as what has been taken at least requires

an opportunity to the appellant to take remedial measures. Merely to disallow restoration on grounds of its failure to file annual returns would neither be just nor equitable. As per several decisions of various Courts it should only be in exceptional circumstances that Court should refuse restoration where the company has been struck off for its failure to file annual return as that would be excessive or inappropriate penalty for that oversight.

9. Accordingly, the petition is allowed subject to payment of costs of Rs. 25,000/- to the Prime Minister Relief Fund. The restoration of the petitioner company's name in the Register will be subject to their filing all outstanding documents for the defaulting years as required by law and completion of all formalities, including payment of any late fee or other charges which are leviable by the respondent for the late filing of statutory returns. The name of the petitioner company shall then stand restored in the Register of the Registrar of Companies (RoC), as if its name of the company had not been struck off.

10. The direction for freezing the Bank Account(s) of the appellant company, if on this ground, shall consequently be also set aside immediately to enable the company carry out its business operation. Compliance of this order for restoration shall be made by the respondent with all its consequential effects within one week of compliance by the appellant.

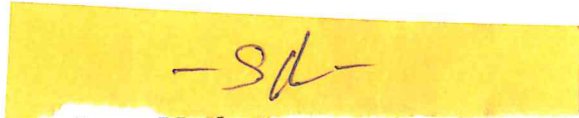
11. The petition is disposed of accordingly.



12. Let the copy of the order be served to the parties.


-sd-
Deepa Krishan

Member (T)


-sd-
Ina Malhotra

Member (J)