

IN THE NATIONAL COMPANY LAW TRIBUNAL

SINGLE BENCH

NEW DELHI

Appeal No.-217/2017

CORAM: SHRI R.VARADHARAJAN, MEMBER (JUDICIAL)

IN THE MATTER OF SECTION 252 OF THE COMPANIES ACT, 2013.

IN THE MATTER OF:

MIRCHI NETWORK PRIVATE LIMITED

(Petitioner Company)

VERSUS

THE REGISTRAR OF COMPANIES

(Respondent)



MEMO OF PARTIES:

MIRCHI NETWORK PRIVATE LIMITED

A Duly Incorporated Company

CIN: U72300DL2007PTC169769

Having its registered office at:

R/o: RZ-44B/2A, Gali No. 5/8

Main Sagarpur New Delhi-110046

AND

KRISHAN KUMAR

Director of Company

R/o: VPO Bibipur Jattan, District Karnal-132041

AND

HARSH ALIAS HARBHAJAN SINGH

Director of Company

R/o: RZ-44B/2A, Gali No. 5/8

Main Sagarpur New Delhi-110046

..... Petitioner

VERSUS

THE REGISTRAR OF COMPANIES

4th Floor, IFCI Towers,

Nehru Place, New Delhi - 110019

.....Respondent

**For the Petitioner : Mr. Divesh Goyal, Company Secretary
(POA Holder)**

**For the Respondent : Mr. Manish Raj, (Co. Prosecutor for RoC)
Ms. Lakshmi Gurung
(Standing Counsel for Income Tax Deptt.)
Ms. Easha Kadian
(Jr. Standing Counsel for Income Tax Deptt)**



ORDER

Delivered on: 25.01.2018

Pursuant to short order dictated in the open court on 22.01.2018, the detailed order is rendered as follows:-

1. This is an Appeal/ Petition which has been preferred u/s 252 of the Companies Act, 2013 by the Petitioner Company in relation to an order of striking off the name of the Petitioner Company passed by the Respondent with effect from 07.06.2017 under the provisions of Section 248 of the Companies Act, 2013. Learned authorized representative for the Petitioner represents that the Petitioner Company was incorporated under the provisions of Companies Act, 1956 and has its registered office at RZ-44B/2A, Gali No. 5/8, Main Sagarpur New Delhi-110046. The Company is into the business of providing all type of education through information technology, computers, multi-level channels, to establish in India or abroad networks of education and other similar services and has been carrying on the said business even as of today. Learned authorized representative for the Petitioner represents that the Company has been filing its income tax returns with the Income Tax Authorities. It is also submitted by the Learned authorized representative that the Company is also amenable to Service Tax



and it has been regularly filing Service Tax Returns with the concerned authority and proof of filing returns have been enclosed as Annexure-N filed along with this Appeal/ Petition. However, despite all these compliances with the various regulatory authorities, compliance in relation to the provisions of Companies Act, 2013 with the Respondent RoC by filing annual returns and financial statements has been omitted to be complied with and that the said omission is not mala fide. According to the Learned authorized representative, the Petitioner Company was unaware of the fact that the Statutory Auditor has failed to file the financial statements before the RoC. Further, the Petitioner has claimed that it was never served any show-cause notice under Sec 248(1) of the Companies Act, 2013 before striking off its name. However, in view of non-filing of the Annual returns and Financial Statement, the name of the Petitioner Company from the register as maintained by the RoC has been struck off on and from 07.06.2017 and in view of demonstration of continued operation of the Company over the past years and presently also its business is being alive and running it will seriously prejudice the interest of the Company and the Petitioners and that taking into consideration the compliances made by the Petitioner in relation to other statutory authorities and since no one will be prejudiced if the Appeal is allowed, but on the other hand, the interest of all



concerned including shareholders/creditors will be seriously affected if the appeal is not allowed and the name of the company in the register of the RoC is not restored.

2. Upon notice ordered to the Registrar of Companies, the RoC has not filed any representation in this regard till date.
3. Upon notice ordered to the Income Tax Department, the Revenue has filed its report on 04.01.2018 and upon consideration of the Appeal it has concluded as follows:

"The Assesse company was incorporated on 23.10.2007, the company is filing its return of income regularly from 2008-09 to 2016-17."

4. We have considered the plea of the Petitioner on one hand and the representations of Income Tax Department to whom notice was issued under the directions of this Tribunal. It is evident from the plea of the Petitioner that even though the due process undertaken by the RoC in striking off the name of the Petitioner Company as envisaged under Section 248 of the Companies Act, 2013 is questioned primarily, the

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Petitioner is seeking for the purpose of restoration of its name in the register as maintained by RoC is relying on the ground that the Petitioner as of date is carrying on the business for which it was incorporated and it is in operation and in the circumstances it is just that the name of the Company should be restored on the register of RoC as maintained by the Respondent. In order to sustain the said plea, the Petitioner has placed before us the following evidences:

- i. Income Tax payments made and returns filed for the assessment year 2015- 16 and 2016-17.
- ii. Copy of document for registration under GST enclosed as Annexure-M.
- iii. Copy of Auditors Report for the year 2012-13 to 2015-16.
- iv. Copy of Bank statement of accounts issued by ICICI Bank, Janakpuri showing transactions details and status of Company period 01.04.2013 to 30.09.2017.
- v. Balance sheet for the year ending on 31.03.2013 to 31.03.2016.
- vi. Copy of Annual Returns along with notice of AGM, Directors Annual Report for the year ending on 2014, 2015 and 2016.



5. As submitted by the Ld. Counsel for the Petitioner, it is seen that the Appellant has been functioning during the period when the name of the company was struck off on 07.06.2017 from the documents listed above filed by the Petitioner. However, even though it will not absolve the Appellant/ Petitioner from filing the necessary statutory returns and documents and adhere to the provisions of Companies Act, 2013 or for that matter Companies Act, 1956 as an onus is placed on the Appellant/ Petitioner to strictly comply with the provisions of Companies Act, 2013 without any let, in the instant case the Petitioner has demonstrated mitigating circumstances for restoration that it was in operation on the date it was struck off as well as the period prior to it (i.e.) from 2013-2017. Thus, taking into consideration the provisions of Section 252 of the Companies Act, 2013 which vests this Tribunal with a discretion were 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 the stakeholders including the Petitioner itself who seek restoration of the name of the Company in the register being maintained by RoC and



in the abovesaid circumstances the Appeal/Petition is allowed subject to the following directions namely:

The Petitioner/Appellant Company shall:

- (a) Within a period of 15 days from the restoration of the Petitioner Company's name in the register being maintained by the RoC, the appellant/ petitioner will file interalia its annual returns and balance sheets as well other compliances statutorily required to be made under the Companies Act, 2013 for the period from which there has been default with requisite charges/fees as well as additional fee/late charges.
- (b) That the Petitioner Company out of its funds, set apart a sum of Rs.2,00,000/- and deposit the same with the Respondent/RoC to defray the cost and expenses as well as towards filing any additional fee in filing the returns and documents which has been failed to be filed leading to its name being struck off from the Register of Companies within a period of one month from the date of this order.
In case of any amount payable in excess of the sum specified towards




defraying the cost incurred by the Respondent/ROC and towards other amounts as are required to be paid by the Company statutorily the same shall be remitted by the Company.

- (c) Till all compliances are made by the Petitioner Company, the Petitioner Company shall not alienate or dispose of any of its valuable assets.
- (d) It is further observed that by virtue of this order of restoration of the name of Appellant/ Petitioner Company in the register it will not entitle the Directors of the Company whose names in case have been disqualified by virtue of provisions of Section 164 of the Companies Act, 2013 by the Respondent/RoC automatically to be restored to directorship except in accordance with law.
- (e) An affidavit of compliance of the aforesaid directions shall be filed by the Petitioner Company within a period of 2 months from the date of this order.



- (f) Further this order allowing the appeal shall also not circumscribe the power of the respondent to proceed against the Petitioner Company and its Directors as mandated for alleged late filing of any forms, documents, returns and such other compliance under the provisions of Companies Act, 2013.

The Appeal is disposed of accordingly.


(R.VARADHARAJAN)
MEMBER (JUDICIAL)

U.D.Mehta/M