

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
ALLAHABAD BENCH**

CA No.146/ALD/2017

*(under Section 252(3), read with 248 of
the Companies Act, 2013
National Company Law Tribunal Rules)*

IN THE MATTER OF

**M/s Vaid Fab Tex Pvt. Ltd.
(A company incorporated under
the companies Act, 1956) and having
its Registered Office situated at D-1109,
Indira Nagar Lucknow U.P.226016**

...Appellant

Versus

**Registrar of Companies Kanpur, Uttar Pradesh
Having its Office at 37/17, Westcott Building,
The Mall, Kanpur-208001**

...Opposite Party

Judgment /Order delivered on 30.01.2018

Coram:

H.P. Chaturvedi, Member (J)

For the petitioner (s).....

**Sh. Sh. Amit Gupta alongwith Ms. Monica
Nanda PCS**

For the Respondent(s).....

Sh. Krishna Dev Vyas (CGSC)

As per.....

H.P. Chaturvedi, Member (Judicial)

Order/Judgment

1. The present appeal is filed under Section 252(3) of the Companies Act, 2013 by the Appellant **M/s Vaid Fab Tex Private Limited** and others seeking for restoration of its name in the Register of office of the Registrar of Companies Kanpur, Uttar Pradesh. The Appellant Company's name stood struck off by Gazette Notification dated 15-21 July, 2017 wherein the name of the Appellant Company is mentioned at Sl. No. 3036.

2. The facts in brief raising to the present company application for seeking above mentioned relief are described as under: -


- a. The Petitioner Company Vaid Fab Tax Private Limited (hereinafter referred to as 'the Company') was originally incorporated on 3rd December, 1991 (Nineteen Hundred Ninety-One) in the name of M/s Sagar Polystraps Industries Private Limited, as a company limited by its shares. It got registered with the Registrar of Companies Kanpur, Uttar Pradesh. Later on the name of the company was changed to M/s Vaid Fab Tex Private Limited and a fresh certificate of Incorporation dated 17.04.2006 was issued by the Registrar of Companies, Kanpur. The same is annexed with the present petition.
- b. It is submitted that the Petitioner Company duly prepared its Annual Accounts, got audited the same from statutory Auditor and adopted it in its respective annual general meeting for previous years which includes financial year ended at 31st March, 2011, 31st March, 2012, 31st March, 2013, 31st March, 2014, 31st March, 2015, 31st March, 2016.
- c. It is submitted that the annual returns and balance sheets of the company could not be filed due to inadvertence by the professional engaged by the company in the O/o ROC Kanpur and compliance could not be made from 2011 onwards. It is submitted that the Director of Petitioner Company were under such impression that their professional has been entrusted with the work of company and hence legal compliances are being made by him by filing necessary returns with ROC. However,


when such came to the notice of them that the professional engaged for making regular compliances of the worked assigned to him did not file annual return/statutory of the Appellant Company from the financial year 2010-2011 onwards with the Office of the ROC Kanpur. The Appellant Company annexed a true copy of its annual reports for last three financial years with the present petition in support of its appeal.

d. It is alleged that the Registrar of Companies, Uttar Pradesh at Kanpur published Public Notice No. ROC/STK/01 dated 31.03.2017 under Section 248 of the Companies Act, 2013 (as available at the portal of Ministry of Company wherein) by removing/striking off the name of Company which was earlier appearing in the Register of the Registrar of Companies. Such public notice has been annexed to the present petition.

3. The main object for incorporation of the Appellant Company may discussed in brief as under: -

i. To carry on the business of manufacturer, importers, exporters, wholesale and retail dealers of and in readymade garments, hosiery goods, clothing, horse clothing & its accessories, PVC tapes, school dresses, ties, belts, socks, shoes & others accessories of all kinds and description, wearing apparel of every kind and description including casual wear, sportswear, traditional costumers, foundation garments made from cotton, silk, synthetic, leather, woollen, blended, worsted, knitted, fabric/textiles of every kind and description.



- ii. To carry on the business of embroidery, chikan work, computerized labels, printing, & artistic work on all kind of clothing, sarees & dress material of all kinds and description.
 - iii. To carry on all or any of the trades or business of preparing, spinning, doubling, weaving, combing, scouring, dyeing, printing and finishing, working on manufacturing in any way whatever, cotton, wool, silk, flax, hemp, artificial silk, rayon, nylon and other fibrous or textiles substances, whether animal vegetable or mineral in any state and whether similar to the foregoing substance or not and to treat and utilize and deal in any waste arising from any such operations, whether carried out by the company or otherwise, and also of markers of vitriol and of bleaching, dyeing and finishing materials, and the buying and selling of an dealing in all or any of the above substances.
 - iv. To purchase, acquire, takeover, merge, amalgamate the business, firm, company, undertaking etc. of all kinds and descriptions, engaged in the business similar to the objects of the company, as a going concern or otherwise.
4. The Appellant Company in support of its appeal further filed a copy of the certificate of incorporation, memorandum of association and article of association which are annexed with the present petition.
5. On the basis of reasons and ground mentioned in proceeding para the Appellant Company has made prayer for grant of such relief:
- a. **To pass appropriate order directing the Respondent to restore the name of the company in the Register with the immediate effect in the terms of Section 252(3) of the Companies Act, 2013.**
 - b. **To pass order in terms of Section 252(3) of Companies Act, 2013 that is just and appropriate placing the company and all other**
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persons in the same position as nearly as may be as if the name of the company has not been struck off.

- c. To pass such other order as this Hon'ble Tribunal may deem fit and proper considering the facts and circumstances of the case.
 - d. To pass such other order as this Hon'ble Tribunal may deem fit and proper considering the facts and circumstances of the case.
 - e. And thus allow to the company petition.
6. During the case of hearing this Bench by its previous order called for a reply/comments from the Respondent/ROC Kanpur. Who in response to the present petition duly filed its reply/report in respect of the present appeal contending such that-
- a. The answering respondent/ROC in Para 3 of its report/reply has stated that petitioner company did not file statutory returns like Balance Sheets and Annual Returns for the last about 06 years after the year 2010. Therefore, the Respondent/ROC has reasonable cause to believe that the petitioner company was not carrying on any business or operation for a period of more than two immediately preceding financial years. Neither any application was made by the company within such period for obtaining the status of a dormant company under Section 455 of the Companies Act, 2013.
 - b. Hence, the Respondent/ROC issued a notice (in prescribed format) dated 16.03.2017 as per the provision of the Section 248(1) of the Companies Act, 2013 read with Rule 3 of the Companies (Removal of names of Companies form the Register of the Companies) Rules 2016, intimating to the Appellant Company about its office intention for removal of the name of



the company from its statutory register for aforesaid reasons. The Appellant Company was further instructed to send its representation, if any, within 30 days from the date of receipt of such notice. It was further mentioned that unless sufficient cause to contrary is shown within the prescribed time period, the name of the company shall be liable to be struck off from the Register of the Registrar of Company and its director shall further liable for appropriate action under the Act. It is stated that despite such notices were issued to the Appellant Company its directors did not response to such notice dated 16.03.2017. The Respondent ROC has enclosed a copy of Notice dated 16.03.2017 with its reply/report.

- c. Thereafter, pursuant to sub-Section (1) and sub-Section (4) of Section 248 of the Companies Act, 2013 and 2nd proviso to Rule 7(1) of the Companies (Removal of names of Companies from the Register of Companies) Rules 2016, a Public Notice was also published on 26.04.2017 in the English Newspaper "**Hindustan Times**" and in Hindi Newspaper "**Hindustan**" having wide circulation in the Uttar Pradesh.
- d. Thereafter a Notification No.18 dated 25.04.2017 was further published in Weekly Gazette of India, Part-III, Section-1 dated 6th May to 12th May, 2017 pursuant to sub-Section (1) and sub-Section (4) of Section 248 of the Companies Act 2013 and 2nd Proviso to Rule 7(1) of the Companies (Removal of names of Companies from the Register of Companies) Rules 2016 by inviting objections from the public concern to the proposed removal/striking off the name of the Appellant Company from



the Register of Companies. In response thereto neither any representation was received from the company/nor from its directors nor any objection was received from any person. **And accordingly, the company was dissolved, vide Notification No.28 dated 03.07.2017 published on 15-21 July, 2017 in Gazette of India, Part-III Section 1 at Sl. No. 2530 (English) pursuant to sub-Section (5) of Section 248 of the Companies Act, 2013 and 2nd Proviso to Rule 7(1) of the Companies (Removal of names of Companies from the Register of Companies) Rules 2016.**

- e. Notwithstanding the above, the ROC Kanpur in its Report has also observed that the present matter can be decided on its merit subject to some cost to be imposed on and with such assurance from the Appellant Company to file all its statutory return including the Balance Sheets and annual returns etc. to the office of the ROC, Kanpur and other Statutory Authority. Within the time granted by this Court, thus by perusing such observation it can be presumed well that the Office of ROC, Kanpur is having no serious objection against restoration of the name of Companies in its Register provided that the present appeal should be considered on its merit and subject to some cost that may be imposed on and further to obtain such undertaking/assurance from the Appellant Company to comply with statutory all its statutory requirement by filing statutory returns Balance Sheet etc.

7. The Appellant Company through the present appeal has given assurance and undertaking to this effect to comply with all statutory requirement if such

opportunity is provided to the company by restoring of its name. For the sake of convenience, the relevant Paras 13, 14, 15, of the present petition can be reproduce herein below.

- i. That the object of Section 252(3) of the Companies Act is to give a chance to the Company, its members and creditors to revive the company which has been struck off by the Registrar of Companies, within a period of 20 years, and to give it an opportunity for carrying on its business and if this Tribunal is satisfied that such restoration is necessary in the interests of justice. Such section reads as under;
- ii. *“if the Tribunal is 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”.*
- iii. *The petitioner has also submitted that in the event of revival of the Company and restoration of its name in the Register maintained by the opposite party/Respondent, the Petitioner Company shall file all outstanding statutory documents i.e. the financial statement & annual returns for the outstanding period alongwith the filing fees and the additional fee, as applicable on the date of actual filing and the certified copy of the order of the Tribunal for the Restoration of the name of the Company to the Register maintained by the opposite party/Respondent.*
- iv. *That for the ends of justice, the present petition may be allowed, since the company is carrying on its business and operation. Further, if this petition is allowed and name of the Company is*



restored, no loss shall be caused to the Registrar of Companies, Kanpur or to any other person/public at large. In fact, restoration shall continue the employment of workers and shall add revenues to the exchequer.

8. During the course of hearing the Appellant Counsel/PCS further informed that the companies have filed its previous Income Tax Return for the year 2014-15, 2105-16, 2016-17 which prove that the company is a going concern.
9. In the light of the facts and circumstances of the present case and having heard the submission of the Amit Gupta and Monica Nanda, PCS Appellant Company and Krishna Dev Vyas for the ROC. We considered the merits of the present appeal we feel that Appellant Company fulfil necessary requirement of Section 252 of the Companies Act, 2013 for Restoration of its name in the Register of the ROC.
10. Before coming to above stated conclusion, we placed reliance on a decision of Delhi High Court in Company Appeal No. 25/2012, in the matter of ZTE Corporation Vs. Siddhant Garg and others' wherein the Division Bench of the Hon'ble Delhi High Court had an occasion to examine similar statutory of the Section 560 of the previous Companies Act, 1956 with its corresponding provision/s in the English Companies Act and their lordships have pleased to observe (in para 5, 8 to 10 of the judgment) and held as such.

"The right of the appellant to file objections as and when execution is filed has not been lost. This remedy is still available to him. Section 560(6) of the Act reads as under:

"560. Power of Registrar of strike defunct company off register-

- i. If a company, or any member or creditor thereof, feels aggrieved by the company having been struck off the register, the [Tribunal], on an application made by the company, member or creditor before the expiry of twenty years from the publication in the Official Gazette of the notice aforesaid, may, if satisfied that the company was, at the time of the striking off, carrying on business or in operation or otherwise that it is*

just that the company be restored to the register, order the name of the company to be restored to the register, and the [Tribunal] may, by the order, give such directions and make such provisions as seem 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."

ii. *Before exercising discretion under this section, the court must be satisfied that the company was, at the time of striking of the company, carrying on business or was in operation;*

iii. *it is otherwise just that the company be restored. The first of this proposition can be answered by a report of the ROC which in this case was positive and this report of the ROC had in fact been considered while passing and order for the restoration of the company. The second is a prima facie finding by the Court persuading it to believe that it was "just" to restore the company.*

iv. *The judicial precedents on this subject clearly are in favour of the restoration of the company and it is only by way of an exception that the restoration should be disallowed. Normally the rule is to allow the restoration. Exercising discretion against restoration would thus be an exception and not the rule. The court would also be varying of refusing restoration so as to possibly safeguard the interest of one particular class of affected persons. This is a discretionary power and is evident from the use of the word "may" in Section 560(6). A statutory period of 20 years' limitation has also been provided in the section for a party to seek restoration. If such a party succeeds the company would be deemed to have been continued in its existence. These observations were quoted with approval by LADDIE J Re Price Land Ltd. [1997] 1 BCLC 468.*

"These considerations lead me to the view that the court should be very wary of refusing restoration so as to penalise a particular Appellant or in a possibly futile attempt to safeguard the special interests of a single or limited class of affected persons. It would need a strong case to justify a refusal on these grounds. For the reasons set out below, I do not think there are such strong ground here."

11. By considering the above referred judicial precedents, it is now a settled legal position that the Court should adopt a liberal approach to allow restoration of company and it is only by way an exception such restoration should be refused. The Hon'ble Delhi High Court has further emphasized such provision stating that the statute prescribed a period of 20 years of limitations to a party (company) for seeking restoration its name and after such a party succeeds in its restoration then the company would be deemed to have been continued in its existence. While in the present matter as per the appellant its name got struck off from the Register of the ROC by the impugned notification

only on 6th May, 2017 as the present petition/Appeal has been filed on 16th October, 2017 before this Bench which is filed well within limitation.

12. In the light of above stated discussion, we feel that the Appellant Company deserve for its restoration. Hence, the present petition appeal is allowed in terms of its prayer clause with such direction that the company shall make all its statutory compliances by filing statutory returns under the provision of Companies Act 2013 to the office of the Respondent/Registrar of Company Kanpur also on the portal of the Ministry of the Corporate Affairs. The appellant further to report its statutory compliances to the Authority Concern within 90 days from the receipt of an authentic copy of this order.
13. In addition to the above the Appellant company shall pay a cost of Rs.25,000/- to the Central Govt. through the office of the ROC Kanpur as a precondition for restoration of the its name. The amount of costs to be paid within four weeks from the receipt of an authentic copy of this order.
14. Further, an authentic copy of this order to be filed before the ROC Kanpur.

With the above stated observation, the present application stand allowed and is finally disposed of.

Date. 30.01.2018

Typed By
Md. Zaid
(Stenographer)

— Sd —

**H.P. Chaturvedi,
Member (Judicial)**