

**THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI BENCH  
AT NEW DELHI**

**C.P. No. 309/252/ND/2017**

**Under Section 252 Sub-Section (3) to the Companies Act, 2013**

In the matter of:  
M/S Incredible Intelligence Services Private Limited

....Appellant

Versus

Registrar of Companies NCT of Delhi and Haryana .....Respondent

**CORAM:**

**MS. INA MALHOTRA, MEMBER (JUDICIAL)**

**MS. DEEPA KRISHAN, MEMBER (TECHNICAL)**

For the Applicant/ Petitioner : Mr. Kamlesh Kumar Chaurasiya, CA.  
Ms. Divya Sood and Mr. Aanchal Jain. CS

For the ROC NCT of Delhi & Haryana : Mr. Manish Raj, Company Prosecutor

For the Income Tax Department : Ms. Lakshmi Gurung, Standing Counsel

*Judgment delivered on: 16/02/2018*

**Per: DEEPA KRISHAN, MEMBER (T)**

**ORDER**

1. The erstwhile directors of M/S Incredible Intelligence Services Private Limited have filed the present appeal under Section 252(3) of the Companies Act, 2013 seeking restoration of the name of the petitioner company which has been struck off by the Registrar of Companies, NCT of Delhi and Haryana.
2. M/S Incredible Intelligence Services Private Limited bearing CIN NO. U74920DL2011PTC228837 was incorporated on 16.12.2011 having its registered office, 202, 2<sup>ND</sup> Floor, R-20 Pratap Complex, Vikas Marg, Laxmi Nagar, East Delhi, New Delhi-110092, within the jurisdiction of this Tribunal.
3. It is the case of the petitioner that the name of the Appellant Company was struck off from the Registrar of Companies under Section 248 of the Companies Act, 2013, by a suo moto action of the Respondent, after issuing the notification under Section 248(5) in the Official Gazette dated 08.07.2017. The aforesaid action was taken on account of failure of the Petitioner Company to file its annual returns and balance sheet since its incorporation i.e. financial year ending 2011-12, giving rise to the reasonable belief that the company was not operational.

4. The petitioner has submitted that during all the financial year since its incorporation, company has conducted Board Meetings and General Meetings as per the requirements of the Companies Act 1956/ 2013. However, the directors of the company have stated that they were not aware of the compliances of filing of required documents with the Registrar of Companies. Though they conducted the Board Meetings and General Meetings every year to discuss the working and financial activities of the Company, the filing of the same could not be executed due to the lack of awareness to the directors. They have further contended that the Email Id mentioned in the incorporation documents as well as in the master data of the company is of the Chartered Accountant who incorporated the company, due to which the company has not received any communication from the ROC regarding the due dates of annual filing as well as the notices pertaining to the striking off. The hard copies of the notices were also not received at the registered office of the company. However, it is stated that the company has prepared the annual accounts for the aforesaid years and the same has been audited by the statutory auditor and accordingly placed on record.
5. It is further contended by the petitioner company that they have placed on record the bank statement from 01-01-2017 to 30.09.2017, TDS certificate and EPF/ ESI Challans to show that company is not a defunct or non-operational or dormant company.



6. It is accordingly submitted that from the filing of Bank Statement from 01.01.2017 to 30.09.2017 , TDS Certificate, EPF/ ESI challans and audited balance sheet up to 31.03.2016, it is manifestly established that the petitioner company has been in operation and therefore it could be said that the petitioner company is not a defunct or non-operational or dormant company within the meaning of Section 252 of the Companies Act, 2013. It is imperative to mention here that the petitioner company have submitted that the hard copies of the notices were also not received at the registered office of the company.
7. The Registrar of Companies has filed its response and submitted that the name of the company was struck off in pursuance of direction issued by the Ministry of Corporate Affairs vide its Office memorandum, No. 3/53/2017. CL.II dated 07.02.2017. It is further stated that due steps had been taken in accordance with the statutory provisions under Section 248 (1) 248 (4) of the Companies Act, 2013 before striking off the name of the petitioner company from their register. It is further stated in the report that the action was initiated as the Petitioner Company did not file the Balance Sheet and Annual Returns since financial year ended 2011-12,2012-13,2013-14,2014-15 & 2015-16, which gave rise to the reasonable presumption that the petitioner company was not in operation.
8. The Respondent Registrar of Companies in its report has stated that it has no objection if the name of the company is restored in the Register of



Companies on the undertaking that the company will file its pending Annual Returns and Balance Sheets since financial year ended on 2011-12 till date along with the requisite late filing fee as prescribed under the law.

9. It is pertinent to mention here that although, TDS certificate has been placed on record but no submission has been made by the appellant regarding the filing of Income tax return.
10. The Income Tax Department has not filed any objection against the restoration of the name of the company in the record of the ROC. It is also pertinent to mention here that the petitioner company has not filed or placed on record any statutory document to show that the income tax return have been filed by them or not for the aforesaid year.
11. It is worth mentioning here that notice has been issued to it department and learned standing counsel on the behalf of income tax has marked its appearance. However, despite giving opportunity no report has been filed by the income tax department and during argument no specific objection have been raised against the restoration of the name of the company.
12. The provision pertaining to restoration of the name of the company has been provided in Section 252 of the Companies Act, 2013 which envisages that: -

**“Appeal to Tribunal**

*252.(1) Any person aggrieved by an order of the Registrar, notifying a company as dissolved under section 248, may file an appeal to the Tribunal within a period of three years from the date*

of the order of the Registrar and if the Tribunal is of the opinion that the removal of the name of the company from the register of companies is not justified in view of the absence of any of the grounds on which the order was passed by the Registrar, it may order restoration of the name of the company in the register of companies:.....

(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 sub-section (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.* (Emphasis given)

13. A perusal of the aforesaid provisions shows that any person aggrieved by the order of the Registrar, notifying a company as dissolved under Section 248 is competent to file an appeal to the National Company Law Tribunal. If a company or any member or creditor feels aggrieved, they would also be competent to file an appeal against the order of the ROC before the expiry of twenty years from the date of publication of order in the official gazette. Sub section 3 of Section 252 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 ROC 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.*

14. When we apply the aforesaid principles to the facts of the present case as the company has placed on record its audited Balance sheets and accounts for the financial year ending 2011-12 to 2015-16, Bank statement from 01.01.2017 to 30.09.2017, TDS certificate as well as the EPF/ESI challans it can be seen that it was carrying on business at the time when its name was struck off from the register of companies.

15. It can be seen from the documents available on record that the company was carrying on its business and was operative at the time of its name struck

off from the register. The assumption of Registrar of Companies that the company was not in operation was clearly erroneous. Besides it is seen that the appeal has been filed within the stipulated period prescribed under Section 252 of the Act. Income Tax Department and ROC have given no specific objection against the restoration of the Company subject to filing of annual returns with fees as prescribed. Besides there is nobody to be prejudiced by the restoration of the name of the Company. On the contrary the restoration is clearly in the interest of the company. Even if the management of the company entrusted with the responsibility of filing of statutory returns had failed to do so, yet since the company is a running company and the application has been filed in time, the Tribunal clearly has the power to restore the name of the company. The lapses for non-filing of annual returns in time can be countered by imposing cost. In this factual background and in the interest of justice the appeal filed by the petitioner deserves to be allowed subject to payment of cost. It is also submitted by the petitioner company that they have not received the hard copy of the notice of striking off.

16. Accordingly, the petition is allowed. The restoration of the petitioner company's name to the Register will be subject to the petitioner company filing all outstanding documents required by 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 on payment of cost of Rs. **25,000/-** to be paid to the Prime Minister Relief Fund.



The name of the 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(5) of the Companies Act, 2013.

16. Liberty is granted to the respondent to proceed with penal action against the petitioner, if so advised, on account of the company's alleged default in compliance with any provisions of the Companies Act, 2013. As there is no clarity in respect of filing of Income Tax Return, hence this order shall not restrain Income Tax Department to initiate any action or proceeding against the appellant prescribed under the law. A copy of the order may be given to the standing counsel of the income tax department for the transmission.

17. The petition is disposed of accordingly.

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

Sd-

(Deepa Krishan)

Member (Technical)

Sd-

(Ina Malhotra)

Member (Judicial)