

**IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI**

**PRINCIPAL BENCH**

**Appeal No.213/2017**

**IN THE MATTER OF:**

Pr. Commissioner of Income Tax, Delhi-6  
(M/s. New Ways Steels Private Limited)

....

Applicant/petitioner

Vs.

Registrar of Companies

....

Respondent

**Order under Section 252(1) of the Companies Act**

**Order delivered on 21.12.2017**

**Coram:**

**CHIEF JUSTICE (Retd.) M.M.KUMAR**  
**Hon'ble President**

**Ms. Deepa Krishan**  
**Hon'ble Member (T)**

For the Applicant/petitioner: Mr. Zoheb Hussain, Senior Standing Counsel for  
Income Tax Department

For the Respondent:

Ms. Aparna Mudiam, AROC  
Mr. Manish Raj, Company Prosecutor

**ORDER**

This appeal under Section 252 (1) read with Section 252 (3) of the Companies Act, 2013 has been preferred by the Principal Commissioner of Income Tax, Delhi with a prayer for restoring the name of the Assessee in the register of the Registrar of Companies and by quashing the notification dated 10.05.2014 passed by the Registrar of Companies who has removed the name of the Assessee company namely M/s. New Ways Steels Private Limited which has caused serious prejudice to the interests of the revenue.



The respondents Registrar of Companies as well as M/s. New Ways Steels Private Limited have been served. The Registrar of Companies has filed its reply on 20.12.2017. The matter came up for hearing yesterday i.e. 20.12.2017 when we asked the Registrar of Companies to produce the original record concerning this case and the process which has been followed for striking off the names of thousands of companies by issuing one order. The name of the M/s. New Ways Steels Private Limited from the register of the Registrar of Companies has also been struck off in the same fashion. The basic object was to ascertain whether any notice to the Assessing officer/Jurisdictional Commissioner of Income Tax was issued before accepting the application of the company for striking off its name. The stand of the Registrar of Companies is that the respondent company filed an affidavit under the voluntary exist scheme.

Learned counsel for the petitioner has pointed out that one Mr. Sachin Garg, Director of M/s. New Ways Steels Private Limited filed an affidavit dated 08.01.2014 deposing in para 8 that on the date of the filing the affidavit the company did not have any dues of Income tax/Sales tax/Central Excise/Banks and Financial Institutions or any other Central or State Government Departments/Authorities or any Local authorities. It

was also deposed in para 9 that no litigation was pending against or involving the company namely M/s. New Ways Steels Private Limited. The other Director also filed similar affidavit making the same statements.

When the matter came up for hearing yesterday we have asked for production of the original file concerning this case and the matter was adjourned for today i.e. 21.12.2017. In the forenoon session today it was stated on behalf of Registrar of Companies that the original file would be produced in the afternoon session. There is urgency in the matter because the petitioner-revenue is likely to incur a loss of revenue as there is huge demand on behalf of the revenue. However, the original record concerning this matter has not been produced.

We are unable to appreciate the stance of the Registrar of Companies by not producing the record and the voluntary exist scheme itself.

In view of the above we find that prima-face the affidavit filed by the erstwhile Directors of M/s. New Ways Steels Private Limited is patently false as the petitioner-revenue has pointed out that there has been tax demand of Rs. 1,36,93,770/- which is outstanding as on date against the assessee including the interest calculated till 25.10.2017. According to the order dated

30.12.2009 the Income Tax Officer, Ward No. 13 (2), New Delhi framed the assessment and held that a sum of Rs. 1,80,00,000/- alleged to have been received by the assessee company against share capital issued by it was held to be unexplained cash credit under Section 68 of Income Tax Act and the same was to be treated as the income of the assessee. Accordingly, the assessment was framed and penalty proceedings were ordered to be initiated under Section 271 (1) (c).

The Commissioner Income Tax (Appeal) reversed the order of the Assessing Officer on 22.06.2012 and the matter was taken to the Income Tax Appellate Tribunal which on 26.07.2017 restored the assessment order passed by the Income Tax Officer. It is thus obvious that the Directors of M/s. New Ways Steels Private Limited had filed false affidavit with regard to the fact that no litigation was pending on 01.02.2014. It is obvious that the appeal before the Income Tax Appellate Tribunal on that date was pending and the aforesaid fact has been mis-stated and suppressed. It was also incumbent upon the Registrar of Companies to issue appropriate notice to ascertain the authenticity of the statement made in the affidavit by the Directors of M/s. New Ways Steels Private Limited. Obviously the Registrar of Companies miserably failed to perform his duty.

In view of the above we find that there is a prima-facie case to restore the name of the company on the Register of the Registrar of Companies in order to protect the interest of the revenue. Accordingly, we pass an interim order restoring the name of the company- M/s. New Ways Steels Private Limited for the purposes of issuance of demand by the Income Tax Department. The aforesaid course is being adopted as the erstwhile Directors of the company are not present.

Let fresh notices be issued to the erstwhile Directors of the company returnable on 19.02.2018.

On the adjourned date the original record concerning this case shall be produced by the Registrar of Company. If the original record is not produced then the Registrar of Companies shall remain present in the Court.

Notices be given dasti.

A copy of the order be given dasti under the signatures of the Bench officer.

List for further consideration on 19.02.2018.

Sd/-

(CHIEF JUSTICE M.M. KUMAR)  
PRESIDENT

Sd/-

(DEEPA KRISHAN)  
MEMBER(TECHNICAL)

21.12.2017  
VINEET