

IN THE NATIONAL COMPANY LAW TRIBUNAL
SINGLE BENCH
NEW DELHI

CA No.103/C-III/(ND)/2017

SECTION: UNDER SECTION 252 OF THE COMPANIES ACT, 2013.

IN THE MATTER OF:

R K AND COMPANY MANPOWER PVT. LTD.
WZ-247,Village-Dasghera,
Todapur, New Delhi-110012

And

R K AND COMPANY MANPOWER PVT. LTD.
WZ-247,Village-Dasghera,
Todapur, New Delhi-110012

.....PETITIONER NO. 1 COMPANY

MS KUMUDANI JANGHU
C-2/998, PALAM VIHAR,
GURGAON-122017

..... PETITIONER NO. 2

MR. MUKESH JANGHU
E-2374, PALAM VIHAR,
GURGAON-122017

..... PETITIONER NO. 3

MR. SANDEEP JANGHU
Z-1, PALAM VIHAR,
GURGAON-122017

..... PETITIONER NO. 4



VS.

THE REGISTRAR OF COMPANIES
DELHI & HARYANA, NEW DELHI
4TH FLOOR, IFCI TOWER,
61, NEHRU PLACE,
NEW DELHI – 11- 019

RESPONDENT

Order delivered on 10.01.2018

Coram:

R.VARADHARAJAN
Hon'ble Member (Judicial)

For the Petitioner : Mr.Rajeev K.Goel, Advocate
Mr. Praveen K. Bharti, Advocate

For the Respondent : Mr. Manish Raj, Co. Prosecutor for RoC
Ms. Lakshmi Gurung,
Standing Counsel for Income Tax Deptt.

ORDER

CA No.103/C-III/(ND)/2017

This is an Application which has been filed by the Petitioners to consider the above Petition which has been filed before this Tribunal in the same format or alternatively to treat the said Petition as an Appeal under the provisions of Section 252(1) of the Companies Act, 2013. A copy in advance it is represented by the Ld.

Counsel for the Petitioner has also been served upon the Registrar of Companies (RoC) being the Respondent. In view of non-resistance on the part of RoC, this Application is considered and allowed and the Petition as filed before this Tribunal is taken as an Appeal and even though the Petition/Appeal was posted on 18.1.2018, based on the representation for an early hearing as pressed by the Ld. Counsel for the Petitioner in view of payment of salaries and wages to the workers and other statutory payments required to be made and as the bankers have freezeed the accounts, the date of hearing may be advanced from 18.1.2018 to 19.12.2017 as was reposted on 12.12.2017. Respondent RoC as well as Income Tax Department do not have any objection in the matter being taken up today for final disposal. Accordingly, the plea of the Ld. Counsel for the Petitioner is accepted and the matter was heard today.

2. This is an Appeal which has been preferred by the Petitioner No.1 jointly with its Directors/shareholders namely Petitioner No.2 to 4 in relation to an order of



striking off the name of the First Petitioner Company passed by the Respondent with effect from 7.6.2017 under the provisions of Section 248 of the Companies Act,2013.Ld Counsel for the Petitioner represents that the Petitioner Company was incorporated under the provisions of Companies Act, 1956 and has its registered office at WZ-247,Village-Dasghera, Todapur, New Delhi-110012. The Company is engaged in the business of providing manpower services and has been carrying on the said business even as of today without any let. Ld. Counsel for the Petitioner also points out that the Company has been filing its income tax returns with the Income Tax Authorities. Further, it is also pointed out that the First Petitioner Company is registered with the Labour Department as labour contractor and manpower supplier and in relation to payments received from its customers, tax is also deducted at source in Form 26-AS in relation to the invoices raised which is evidenced by Form 26-AS for the period 2016-17. It is also submitted by the Ld. Counsel



for the Petitioner that the First Petitioner Company is also amenable to service tax and it has been regularly filing returns with respect to service tax as well as making payments of service tax to the concerned authorities. Ld. Counsel for the Petitioner also draws attention to the fact that being a manpower service provider and supplier as also a labour contractor, it has also filed necessary returns with Employees State Insurance (ESI), provident fund and labour welfare for all these years and as proof of filing returns and making payments towards all of the above, evidences have been enclosed as Annexure filed along with this Appeal. It is further pointed out by the Ld. Counsel that presently the Appellant No.1 Company is having more than 3900 employees on its payroll and monthly outflow by way of salaries to the above noted employees comes to approximately anywhere between Rs.3.00 crore to Rs.3.50 crore per month. 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 and according to Ld. Counsel for the Petitioner has occasioned due to inadvertence on the part of the professional engaged to carry out the said compliance. However, in view of non-filing of the returns, the name of the Petitioner Company from the register as maintained by the RoC has been struck off on and from 7.6.2017 and in view of demonstration of continued operation of the Company over the past years and presently and also its business is alive and kicking during all these years 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, employees of the Company will be seriously affected if it is not restored.



3. Upon notice to the Respondent RoC, RoC has filed reply to the above said Appeal. In paragraph 3 and 4 of the reply, the following has been submitted:

3. "In pursuance of direction issued by the Ministry vide its Office Memorandum No.3/53/2017.CL.II dated 07.02.2017, this office identified 53312 Companies for initiating action for striking off their names in terms of provision of section 248 (1)(c) of the Companies Act, 2013 for non-filing of statutory documents for financial years ended 31.03.2014 and 31.03.2015. Section 248 is reproduced as under:

Section 248(1)(C) of Companies Act,2013 provides "Where the Registrar has reasonable cause to believe that-

(c) a company is not carrying on any business or operation for a period of two immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant company under section 455, he shall send a notice to the company and all the directors of the company, of his intention to remove the name of the company from the register of companies and requesting them to send their representations along with copies of the relevant documents, if any, within a period of thirty days from the date of the notice."

4. Pursuant to sub-section (1) and sub-section (4) of section 248 of the Companies Act, 2013 and Rule 7 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 (reproduced herein below for kind reference) in the first phase 27291 companies were shortlisted.

Section 248(4) of the Companies Act,2013 provides "A notice issued under sub-section (1) or sub-section (2) shall be published in the prescribed manner and also in the Official Gazette for the information of the general public.

Rule 7 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 provides -
"Manner of publication of notice-

(1) The notice under sub-section (1) or sub-section(2) of section 248 shall be in Form STK 5 or STK 6, as the case may be, and be-

- Placed on the official website of the Ministry of Corporate Affairs on a separate link established on such website in this regard;
- Published in the Official Gazette;
- Published in English language in a leading English newspaper and at least once in vernacular language in a leading vernacular language newspaper, both having wide circulation in the State in which the registered office of the company is situated.

(2)The Registrar of Companies shall, simultaneously intimate the concerned regulatory authorities regulating the company viz. the Income-tax authorities, central excise authorities and service-tax authorities having jurisdiction over the company, about the proposed action of removal or striking off the names of such companies and seek objections, if any, to be furnished within a period of thirty days from the date of issue of the letter of intimation and if no objections are received within thirty days from the respective authority, it shall be presumed that they have no objections to the proposed action of striking off or removal of name"

4. Pursuance to the above provisions and rules, it is represented by the Ld. Company Prosecutor for RoC that the procedure in relation to striking off was adopted in relation to Companies numbering 22864 out of 27291 Companies in which list the Petitioner Company also figures and hence was struck off. It is also evidenced from the report/observations as filed by the Respondent as represented by the Ld. Company Prosecutor that subsequent to the striking off, the first Petitioner had

managed to file its annual returns on 23.6.2017 for the year ending 31.3.2015 and 31.3.2016 and on 16.6.2017 for the year ending 31.03.2014 and similarly balance sheet has been filed for the year ended 31.3.2015 and 31.3.2016 on 19.6.2017. In any case, it is also pointed out by the Ld. Company Prosecutor appearing for the RoC that based on the observations filed by the Respondent that for the financial year ending 31.03.2014 no balance sheet has been filed. It is also pointed out on behalf of the Respondent that due process of law prior to striking off was strictly complied with and in view of the Respondent not having received any communication from the Petitioner Company in response to the notice issued under sub-Section 1 and sub-Section 4 of Section 248 of the Companies Act, 2013 and Rule 7 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016, the Respondent was forced to follow the procedure for striking off and in the



circumstances the decision for restoration is being left to this Tribunal for its consideration.

5. Upon notice ordered to the Income Tax Department, the Revenue has filed its report dated 01.12.2017 and perusal of the said representation made by the Department dated 29.11.2017 upon consideration of the Appeal it has concluded as follows:

"On the basis of information available with us as on date the assessee is filing return of income regularly and no demand is pending against the assessee. Further, it is worth mentioning here that if the assessee get struck off by RoC, then the interest of the revenue would be impacted."

6. We have considered the plea of the Petitioner on the one hand and the Respondent/RoC as well as 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 the Petitioner is not questioning the due process undertaken by the RoC in



striking off the name of the First Petitioner Company as envisaged under Section 248 of the Companies Act, 2013 read with attendant Rules which have been extracted in paragraph supra. However, the 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 overwhelming evidences by way of the following:

- (i) Income Tax payments made and returns filed for the period from 2014-2015 to 2016-2017 .
- (ii) ESI payments made and returns filed for the period from April,2014 to March,2017.



(iii) Employees Provident Fund Payments made and returns filed for the period from April,2014 to March,2017 .

(iv) Payments made and proof of dispatch to Labour Welfare Board, Delhi Welfare Commissioner.

(v) Payments made to Labour Welfare Board, Haryana, Welfare Commissioner.

(vi) Service Tax payments made and returns filed for the period from April, 2014 to March,2017 .

7. As submitted by the Ld. Counsel for the Petitioner, it is seen that the Petitioner has been consistently complying with the statutory formalities in relation to both fiscal as well as in relation to labour law compliances. However, it will not even though absolve the Petitioner from filing the necessary returns and documents and adhere to the provisions of Companies Act, 2013 as an onus is placed on the Petitioner to strictly comply with the provisions of Companies Act, 2013 without any let, however in the



instant case the Petitioner has demonstrated mitigating circumstances and 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 it is a running business as on the date when its 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. This Tribunal also takes into account the report as filed by the Income Tax Department that the interest of revenue will also be seriously prejudiced if the Company is not restored in the register from which it was struck off. Further taking into consideration the interest of all the stakeholders who deemed to seek restoration of the name of the Company in the register being maintained by RoC and in the circumstances the Appeal/Petition is allowed subject to the following directions namely:

The Petitioner Company shall:



- (a) Subsequent to the period of 15 days from the restoration of the Petitioner Company's name in the register being maintained by the RoC, will file its annual returns and balance sheets 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 lakhs and deposit the same with the Respondent/RoC to defray the cost and expenses within a period of one month from the date of this order.
- (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 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 will not stand automatically 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 forms and returns under the provisions of Companies Act, 2013.

The Appeal is disposed of accordingly.

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Sd/-
(R.VARADHARAJAN)
MEMBER (JUDICIAL)

10.1.2018

U.D.Mehta
10.01.2018