

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

Company Petition No. 344 (ND)/2017

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

In the matter of:

M/s Airwide Car Rent Private Limited

.....Petitioner

Versus

Registrar of Companies NCT of Delhi and
Haryana

.....Respondent

CORAM:

MS. INA MALHOTRA, MEMBER (JUDICIAL)

MR. S. K. MOHAPATRA, MEMBER (TECHNICAL)

For the Appellant

: Mr. Rahul Raj Malik, Advocate

For ROC

: Mr. Manish Raj, Company Prosecutor

For the Income Tax Department

: Ms. Lakshmi Gurung, Standing Counsel

Judgment delivered on: 12.01.2018

Per: S. K. Mohapatra, Member

ORDER

1. One of the authorised directors of M/s Airwide Car Rent Private Limited has 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 Air Wide Express Cargo Private Limited was incorporated on 16th March, 2011 having its registered office situated at T-515 Upper Ridge Road, near Naaz Cinema, Jhandewalan, New Delhi-110055, within the jurisdiction of this Court.
3. It is the case of appellant that the name of the present company was struck off w.e.f 07.06.2017 from the Register 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. Though the name of the company was struck off w.e.f. 07.06.2017; it filed annual returns pertaining to the period from 2014 to 2016 belatedly in June 2017. However the company has not filed its balance sheets from the financial year ending 31.03.2014. The aforesaid

action was taken on account of failure of the Petitioner Company to file its statutory returns on time giving rise to the reasonable belief that the company was not operational.

4. It is also the case of the appellant that the company was regular in carrying on its business and maintaining all documentations as per the provisions of the Companies Act, 2013. It is also the case of the petitioner that annual returns and balance sheets for the year ending 31.03.2013 has been filed on 21.04.2014. It is further submitted that the Annual Returns in respect of the company have been duly filed till the financial year 2015-2016. The company however has not filed its balance sheets from the year ending 31.03.2014. The copies of respective Challans showing filing of upto date annual returns have also been placed on record.
5. It is further submitted that the company was operational and working ~~on the~~ ^{at} date of removal of its name by Respondent. Additionally, it is stated that the details of transactions made by the company in normal course of business have been mentioned in the enclosed audited balance sheets of the company.
6. It is accordingly submitted that from the copies of challans of filing of annual returns, and from the enclosed audited financial statements 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.

7. It is also the case of the appellant that before striking of its name a show cause notice dated 18.03.2017 was received by the Company and after receipt of notice the company immediately appointed a new chartered accountant for the purpose of adhering the statutory compliances. Then the company has filed its financial statements for the year 2013-14 on 29.05.2017 and for the year 2014-15 and 2015-16 on 13.06.2017.
8. 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.
9. It is further stated in the report that the company had filed its annual returns for the financial year ended 31.03.2014 on 29.05.2017 and for the year ended 31.03.2015 and 31.03.2016 on 13.06.2017 but the Balance Sheets for the said three years have not been filed till date. Due to such belated filing of so many financial statements, ROC had reasonable cause to believe that the petitioner company was inactive and was struck off w.e.f. 07.06.2017.



10. The Respondent Registrar of Companies, however, has not made any specific objection if the name of the company is restored subject to filing of all statutory documents since financial year 2013-14 in the Register of Companies alongwith applicable fee and additional fee as payable on the date of filing.
11. The learned Standing Counsel appearing on behalf of Income Tax Department has filed its representation stating that the company has filed its ITRs on time since Assessment year 2011-12 to 2017-18. It is further stated that no tax dues are pending and that no scrutiny assessment proceeding is pending against the company. No specific objection has been raised by the department against the restoration of the name of the company in ROC's record.
12. The provision pertaining to restoration of the name of the company has been provided in Section 252 of the Companies Act, 2013 which is *pari-materia* to Section 560 of the 1956 Act and the same 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 it can be seen from the report of the income tax department and the copies of challans of filing of annual returns for the financial years 2014 to 2016 by the petitioner company that it was carrying on business at the time when its name was struck off from the register of companies. The company has also placed on record its certified copies of Balance sheets and accounts for the financial year ending 31.03.2014 to 31.03.2016. In view of the position stated above it is clear that the company was in operation at the time of struck off and was functional.

15. It is pertinent to refer here the case of Vats Association Pvt. Ltd. Vs. ROC reported in (2010) 102SCL 397 (Del), where at the time of striking off the company was flourishing but accounts could not be filed due to secretary's negligence, restoration was ordered. However, in the present case the company filed its various returns from financial year 2006 to 2016 much belatedly in August 2017.



16. The facts of the case are also similar to the law laid down in the matter of Purushottam dass and Anr. (Bulakidas Mohta Co. P. Ltd.) V. Registrar of Companies, Maharashtra, & Ors., (1986) 60 Comp Cos 154 (Bom), wherein the Hon'ble Bombay High Court has held that:

"The object of Section 560(6) 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 period of 20 years, and give them an opportunity of carrying on the business only after the company judge is satisfied that such restoration is necessary in the interest of justice"

17. It can be seen from the documents available on record that the company was carrying on its business and was operative at the time its name was struck off from the register. The assumption of Registrar of Companies that the company was not in operation was clearly erroneous. It is pertinent to note here that though the company's name was struck off w.e.f. 07.06.2017, vide gazetted notification dated 08.07.2017, ROC has admitted that the updated returns till 31.03.2016 have been filed by the company on 13.06.2017. Once the documents have been filed by the company though belatedly but before the date of publication of ~~the~~ gazetted notification, its name should not have been struck off merely on the ground of assumption. It is worth mentioning that the company was filing its income tax returns on time as per the



representation of income tax department. There is no doubt that there was delay and laches on the part of the management of the Company in not filing the financial statements from 2014. The lapses for non-filing of financial statements in time can be countered by imposing cost. Besides it is seen that the appeal has been filed within the stipulated period prescribed under Section 252 of the Act. Needless to say that Income Tax Department and ROC have given no specific objection against the restoration of the Company. 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. 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.

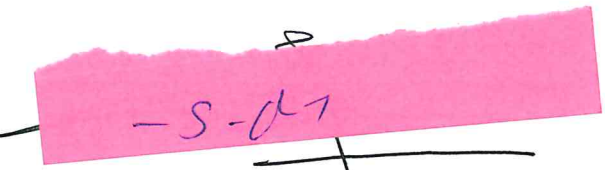
18. Accordingly, the petition is allowed. The restoration of the petitioner company's name to the Register will be subject to the petitioner company filing all outstanding documents required by law and completion of all formalities, including payment of any late fee or any other charges which are leviable 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 petitioner company and its directors 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.



19. Liberty is granted to the respondent to proceed with appropriate action as per law against the petitioner, if so advised, on account of the company's alleged late filing in compliance with the provisions of the Companies Act, 2013.

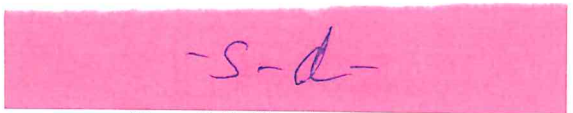
20. The petition is disposed of accordingly.

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



-S-d-

(S. K. Mohapatra)
Member Technical



-S-d-

(Ina Malhotra)
Member Judicial