

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

CP No. 362(ND)/2017

IN THE MATTER OF:

Massif Securitas Private Limited

..... Petitioner

Versus

The Registrar of Companies

..... Respondent

CORAM:

MS. INA MALHOTRA, MEMBER (JUDICIAL)

MS. DEEPA KRISHAN, MEMBER (TECHNICAL)

PRSESNT- Mr. P.K Satapatay, FCS

Order Delivered on: 05.02.2018

ORDER

As Per Ms. Ina Malhotra(Member Judicial)

This is an appeal filed by M/s Massif Securitas Pvt. Ltd. CIN- U74999 DL2009 PTC192486 invoking the provision of Section 252 of the Companies Act, 2013 for restoration of the name of the petitioner company in the register maintained by the Registrar of Companies, NCT of Delhi and Haryana.

2. As per the averments, M/s Massif Securitas Pvt. Ltd. was incorporated on 30.02.2006 having its registered office, at B-5, Kundan House, Nehru Place, New Delhi-110096, within the jurisdiction of this Tribunal. The petitioner is engaged in the business of providing manpower security and has more than 100 people in its employment.
3. A sweeping action was initiated by the RoC at the instance of MCA in striking of the names of several Companies who had consistently failed to file their Statutory Returns for 3 years, thereby giving rise to the surmise that the business of the company was inoperative.
4. The Petitioner Company had failed to file its statutory returns and other documents for the financial year ending 2013-2014, 2014-2015 and 2015-2016 with the office of the RoC as per the Statutory requirements. Consequently its name was struck off from the Register of Companies under Section 248 of the Companies Act, 2013, by the Respondent, after issuing a notification under Section 248(5) in the Official Gazette dated 08.07.2017 applicable to all defaulters. The names of the effected companies were posted on its website.

The petitioner has contended that non-filing of statutory documents with the respondents was an inadvertent mistake on the part of the management mainly in view of management disputes. They are ready to file the statutory documents now with payment of the additional fees. The copies of the audited Balance Sheets for the financial years 2013-14, 2014-15 and 2015-16 have been placed on record to show that the business of the company was in operation.

5. In Order to corroborate their submission that the company was carrying on its business of providing man power services, the appellant has also filed the Income Tax Returns, the EPF record and submit that they have been praying the GST Statements showing their active involvement in business during the relevant years.
6. The Registrar of Companies has filed its response on 15.11.2017, submitting that the name of the company was struck off pursuant to a 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) and 248 (4) of the Companies Act, 2013 before striking off the name of the petitioner company from their register. It is confirmed that the impugned action was initiated as the Petitioner Company did not file the Balance Sheet and Annual Returns since financial year ending on 31.03.2013, which gave rise to the reasonable presumption that the petitioner company was not in operation.
7. The Respondent, Registrar of Companies, has further stated that the name of the company may be restored in the Register of Companies on the undertaking that the company will file its pending Annual Returns and Balance Sheets for the period in default, i.e. w.e.f. the financial year ending on 31.03.2013 till date along with the requisite late filing fee as prescribed under the law.
8. The provision pertaining to restoration of the name of the company has been provided in Section 252 of the Companies

Act, 2013 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:

9. The case of the appellant is covered by a catena of judgements where restoration has been duly allowed. 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 the secretary's negligence, restoration was ordered. 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

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interest of justice"

10. On perusal of the documents, a reasonable presumption can be inferred that the company was carrying on its business and was operative at the time of its name being struck off from the Register. The assumption of the Registrar of Companies that the company was not in operation was founded merely on grounds of non-filing of the Returns. The Act itself provides for redressal of these defaults. A step as stringent as what has been taken at least requires an opportunity to the appellant to take remedial measures, failing which they may face the consequences. In the present case, the appeal has been filed within the stipulated period prescribed under Section 252 of the Act. The ROC has no objection to the restoration of the Company subject to filing of returns with the prescribed fees. Besides nobody is prejudiced by the restoration of the name of the Company. On the contrary the restoration is clearly in the interest of the company. Despite the management of the company having failed to file the statutory returns, yet as the company is a running company and the appeal against the impugned order has been filed on time, this Tribunal has the power direct restoration of the name of the company with the RoC.

Even otherwise, it should only be in exceptional circumstances that courts should refuse restoration where the company had been struck off for its failure to file annual returns as that would be excessive or inappropriate penalty for that oversight. The non adherence to the statutory provision on time can be rectified by imposing cost.


11. In the factual background and in the interest of justice,

the appeal filed by the petitioner deserves to be allowed subject to payment of cost. In exercise of the powers vested with this Bench under Section 252 of the Act, we also deem it just and proper to direct the RoC to restore the name of the Appellant with all consequential reliefs.

12. Accordingly, the petition is allowed. The restoration of the petitioner company's name in the Register will be subject to their 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. 25000/-** to be paid to the Prime Minister Relief Fund.

The directions for freezing the Bank Account(s), if on this ground, shall consequently be also set aside immediately to enable the company carry out its business operations. Compliance of this order for restoration shall be made by the Respondents with all its consequential effects within one week of compliance by the appellant.

13. The petition is disposed of accordingly.
14. Let the copy of the order be served to the parties.


(Deepa Krishan)
Member (T)


(Ina Malhotra)
Member (J)