

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

**Company Petition No. 144(ND)/2017**

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

In the matter of:

M/s Creatigies Communications Pvt. Ltd.

.....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

: Counsel for the Petitioner

For the Income Tax Department

: Ms. Lakshmi Gurung, Standing Counsel



**Per: S. K. Mohapatra, Member**

**ORDER**

1. One of the authorised directors of M/s Creatigies Communication 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 Creatigies Communication Private Limited was incorporated on 20<sup>th</sup> August, 1999 having its registered office situated at 13, Aradhana Enclave, Section – 13, New Delhi 110066, 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 21.08.2017 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 09.09.2017. The company filed its returns pertaining to the period from 2006 to 2016 much belatedly in August 2017. 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 has filed its Annual Return and Balance Sheets including the up to date Income Tax Returns (ITRs). The copies of financial statements and acknowledgement receipts of filing ITRs have been placed on record. It is also the case of the petitioner that the delay in filing of financial statements was neither wilful nor intentional. It is submitted that the financial statements and Annual Returns in respect of the company have been duly filed till the financial year 2015-2016. The copies of respective Challans have also been placed on record.
5. It is further submitted that the company was operational and working till date of removal of its name by Respondent. Additionally, to prove their operational status the petitioner has filed copies various agreements entered into between different parties. It is contended that at the time of struck off it had 10 employees on roll with the company. List of the employees have been enclosed. Besides the company had a number of contracts with numerous corporates who had entered into advertising and marketing contracts with company. It is further stated that if the company has not been restored the agreements will become infructuous and will lead to nullity.
6. It is accordingly submitted that from the copies of challans of filing of audited financial statements, ITRs, employees list and various agreements, 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 no show cause notice was ever issued by the Registrar of Companies to the company or its directors as required under the provisions of Section 248(1) of the Companies Act, 2013.
8. The Registrar of Companies has filed its response on 11.12.2017 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. However notice alleged to have been sent under Section 248(1) (Form STK-1) has not been enclosed. Therefore adverse inference can be taken as service of notice under Section 248(1) by Respondent could not be proved.
9. It is further stated in the report that the company had filed its annual returns and Balance Sheet for the financial year ended 31.03.2006 to 31.03.2016 between 12.08.2017 to 19.08.2017. 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. 21.08.2017.



10. The Respondent Registrar of Companies, however, has no objection if the name of the company is restored in the Register of Companies.
11. The learned Standing Counsel appearing on behalf of Income Tax Department has submitted during hearing on 11.12.2017 that they have no objection to 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 income tax returns and the copies of challans of filing of annual returns for the financial years 2006 to 2016 by the petitioner




company including employees list and several agreements 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 31.03.2006 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. Secondly, it is seen that no show cause notice was issued by the Registrar of Companies to the Petitioner Company or its Directors before striking off the name of Company as required under sub-section 1 of Section 248 of the Companies Act, 2013. It is pertinent to note here that though the company's name was struck off w.e.f. 21.08.2017, ROC has admitted that the updated returns till 31.03.2016 have been filed latest by 19.08.2017. Once the documents have been filed by the company though belatedly but before the date of its striking off, its name should not have been struck off merely on the ground of assumption. There is no doubt that there was delay and laches on the part of the management of the Company in filing the various returns in time. However it cannot be overlooked that ROC has failed to note that the date of filing of the returns of the company was prior to the date of striking off its name. 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 their no objection for 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 these





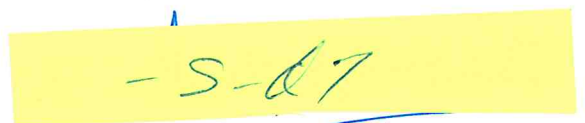
factual background and in the interest of justice the appeal filed by the petitioner deserves to be allowed.

18. Accordingly, the petition is allowed. The name of the petitioner company, its directors and members 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. K. Mohapatra)**  
**Member Technical**



**(Ina Malhotra)**  
**Member Judicial**

Deepak Kumar