

IN THE NATIONAL COMPANY LAW TRIBUNAL

SINGLE BENCH

NEW DELHI

CP No.162/(ND/2017

CORAM: SHRI R.VARADHARAJAN, MEMBER (JUDICIAL)

IN THE MATTER OF SECTION 252 OF THE COMPANIES ACT, 2013.

IN THE MATTER OF:

ROYAL CATERERS PRIVATE LIMITED

(Petitioner Company)

VERSUS

THE REGISTRAR OF COMPANIES

(Respondent)



MEMO OF PARTIES:

ROYAL CATERERS PRIVATE LIMITED
CIN: U55204DL1998PTC095136
P-204, First Floor, Palam Apartment,
Brijwasan, Delhi – 110092.

.....Petitioner

VERSUS

THE REGISTRAR OF COMPANIES
4th Floor, IFCI Towers,
Nehru Place, New Delhi - 110019

.....Respondent

For the Petitioner : **Ms. Geeta Rani Wadhwa,**
(Practising Company Secretary)

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



ORDER

Delivered on: 12.01.2018

1. This is an Appeal/ Petition which has been preferred u/s 252(1) of the Companies Act, 2013 by the Petitioner Company in relation to an order of striking off the name of the Petitioner Company passed by the Respondent with effect from 07.06.2017 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 P-204, First Floor, Palam Apartment, Brijwasan, Delhi – 110062. The Company is engaged in the business of food catering work and has been carrying on the said business even as of today. Ld. Counsel for the Petitioner represents that the Company has been filing its income tax returns with the Income Tax Authorities. Ld. Counsel for the Petitioner also submitted that it has also filed necessary returns with Employees Provident Fund Organization and as a proof of filing returns and making payment towards employees' welfare, evidences have been enclosed as Annexure filed along with this Appeal. It is further submitted by the Ld. Counsel that the petitioner company had tried getting annual filing done in March 2016 itself but the same could not be done due to non-acceptance of digital signature on MCA Portal and the complaint for the same was filed on MCA vide



complaint no. SR63073. A copy of the complaint it is stated has been also placed on record. It is further pointed out by the Ld. Counsel that presently the Petitioner Company is having 50 number of employees on its payroll who are completely dependent on the company for their survival. 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 the continuous changes in the staff of the accounts department and the Board of Directors of the Petitioner Company inadvertently failed to verify whether compliance has been done or not. However, in view of non-filing of the Annual returns and Balance Sheets, the name of the Petitioner Company from the register as maintained by the RoC has been struck off on and from 07.06.2017 and in view of demonstration of continued operation of the Company over the past several years and presently too it will seriously prejudice the interest of the Company and the Petitioner 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 the appeal is not allowed and the name of the company in the register of the RoC is not restored.

2. Upon notice to the Respondent RoC, RoC has filed its 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 which 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"

3. Pursuant 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 Appellant had not filed its annual returns and Balance Sheets since financial year ended on 31.03.2013 due to which the Respondent had reasonable cause to believe that the petitioner company was inactive. 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.

4. Upon notice ordered to the Income Tax Department, the Revenue has filed its report dated 12.12.2017 and upon consideration of the Appeal it has concluded as follows:



"As per the latest ITR filed by the company for the A.Y. 2016-2017, the total income of company is Rs. 9,83,428/-. The total authorized share capital of the company is Rs. 5,00,000/-. Further as per ITD system, though no regular demand is outstanding against the company, there is an active demand of Fringe Benefits Tax (FBT) of Rs. 1,23,610.00/- for the year 2006-07, 2007-08 and 2008-09 pending against the said company. However, refunds for the years w.e.f 2003-04 to 2016-17 total amounting to Rs. 18,18,288/- are pending."

5. 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 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 2013- 2014 to 2015- 2016.
- ii. Copy of Bank statement of accounts issued by Yes Bank, Gurgaon Branch, Haryana, showing transactions details and status of Company as active for the period 01.06.2017 to 30.06.2017 and 01.08.2017 to 27.09.2017.
- iii. Balance sheet for the year ending on 31.03.2014 to 31.03.2016.
- iv. Directors Annual Report and Independent Auditors Report for the year ending on 31.03.2014 to 31.03.2016.
- v. Monthly contribution challan towards Employees Provident Fund Organization for the month of August 2017.
- vi. Copy of challans of annual filing form 20B and 23AC for the year ending on 31.03.2013 with the MCA.

6. As submitted by the Ld. Counsel for the Petitioner, it is seen that the Appellant has been functioning during the period when the name of the company was struck off. However, even though it will not absolve the Appellant/ Petitioner from filing the necessary returns and documents and adhere to the provisions of Companies Act, 2013 as an onus is placed on the Appellant/ Petitioner to strictly comply with the provisions of Companies Act, 2013 without any let, in the instant case the Petitioner



has demonstrated mitigating circumstances. In addition the report/ observation of the Income Tax Department who have filed the same upon notice, also evidences that the Petitioner company has been regular in filing returns all these years and that it is also entitled to refund in a sum of ₹18,18,288/- which the Petitioner company will not be entitled to presently otherwise. Thus, 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 there is a running business as on the date when the 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 and in the interest of all the stakeholders including the Petitioner itself who seek restoration of the name of the Company in the register being maintained by RoC and in the abovesaid circumstances the Appeal/Petition is allowed subject to the following directions namely:

The Appellant/ 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.2,00,000/- 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 automatically to be restored to directorship except in accordance with law.
- (e) An affidavit of compliance of the aforesaid directions shall be filed by the Appellant/ Petitioner Company within a period of 2 months from the date of this order.
- (f) Further this order allowing the appeal/ petition 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.


(R.VARADHARAJAN)
MEMBER (JUDICIAL)

U.D.Mehta
Assisted by: Madhuri Jain