

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

CP No. 326 (ND)/2017

IN THE MATTER OF:

M/s Zest Hospitality and Catering Private Limited

..... Petitioner

Versus

The Registrar of Companies

..... Respondent

CORAM:

MS. INA MALHOTRA, MEMBER (JUDICIAL)

Order Delivered on: 17.01.2018

ORDER

As Per Ms. Ina Malhotra(Member Judicial)

This is an appeal filed by M/s Zest Hospitality and Catering Pvt. Ltd. invoking the provision of Section 252 (3) 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 Zest Hospitality and Catering Pvt. Ltd. was incorporated on 16.07.2010 having its registered office, at 18-A, Pocket B Mayur Vihar Phase-II, New Delhi-110019, within the jurisdiction of this Tribunal.
3. A sweeping action was initiated by the RoC at the instance of MCA in striking of the names of more than 50,000 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 Statutory requirements. Consequently its name was struck off from the Register of Companies under Section 248 of the Companies Act, 2013, by a suo moto action of the Respondent, after issuing a notification under Section

248(5) in the Official Gazette dated 08.07.2017 applicable to all defaulters.

5. The petitioner has submitted that the aforesaid lapse was without any mala fide motive and on account of lack of proper professional advice.
6. It is also the submitted by the petitioner that through the Annual returns of the appellant company for the years 2013-2014 and 2015-2016 were filed on 21.06.2017 and 22.06.2017 along with MGT-7, prior to the notification, It was only on 05.07.2017, when they attempted to file their Balance Sheet, Profit and Loss Account and the Auditors Report on the MCA website, that they found that the petitioner company's name had been struck off from the register by the respondent.
7. The aforesaid action of the RoC is impugned on grounds that no individual notice was effected on them, nor any opportunity given to take remedial steps, which is against the cannons of natural justice. The office of the RoC issued a public notice of striking off of names of several thousand companies from their Register by a general order published in the newspapers. The names of the effected companies were posted on its website only. It is contended that non-filing of statutory documents with the respondents was an

inadvertent mistake on that part of the management of the company but it was not deliberate. The directors 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, 2015-16 have been placed on record to show that the business of the company was in operation.

8. In Order to corroborate their submission that the company was carrying on its business, the appellant has also filed its Income Tax Returns as well as a copy of the Bank Statements showing their active involvement in business in the relevant years. Various TDS deducted from the business proceeds have been reflected in their form 26 AS filed alongwith.
9. The Registrar of Companies has filed its response on 27.10.2017 and submitted 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 31.03.2014, which gave rise to the reasonable presumption that the petitioner company was not in operation.

10. The Respondent, Registrar of Companies, has further stated that it has no objection if the name of the company is 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 year ending on 31.03.2014 till date along with the requisite late filing fee as prescribed under the law.

11. 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:

(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."

12. 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 interest of justice"

13. It can be seen from the documents available on record that the company was carrying on its business and was operative at the time of its name struck off from the register. The assumption of Registrar of Companies that the company was not in operation was clearly erroneous. A step as stringent as what has been taken at least requires a notice to be served on the individual company and afford an opportunity 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

contrary the restoration is clearly in the interest of the company. Even if the management of the company entrusted the responsibility of filing of statutory returns to a professional who failed to do so, yet as the company is a running company and the appeal against the impugned order has been filed on time, the Tribunal clearly has the power to restore the name of the company. The non adherence to the statutory provision on time can be rectified by imposing cost. 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.

14. 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. 25,000/-** to be paid to the Prime Minister Relief Fund. 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.

15. Liberty is granted to the respondent to proceed with penal action against the petitioner, if so advised, on account of the company's alleged default in compliance with any provisions of the Companies Act, 2013.

16. The petition is disposed of accordingly.

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

—Sd—

Ina Malhotra
Member (J)