

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

C.P. No. 341/252/ND/2017

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

In the matter of:

Max Buildcon Private Limited

Versus

.....Appellant

Registrar of Companies NCT of Delhi and Haryana

.....Respondent

CORAM:

MS. INA MALHOTRA, MEMBER (JUDICIAL)

MS. DEEPA KRISHAN, MEMBER (TECHNICAL)

For the Applicant/ Petitioner

For the ROC NCT of Delhi &
Haryana

For the Income Tax Department

:

Ms. Pooja Babbar, PCS.

:

Mr. Manish Raj, Company Prosecutor

:

Ms. Lakshmi Gurung, Standing Counsel

Per: DEEPA KRISHAN, MEMBER (T)

ORDER

1. The erstwhile directors of Max Buildcon Private Limited have 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. Max Buildcon Private Limited bearing CIN NO. U70109DL2006PTC151008 was incorporated on 15.07.2006 having its registered office, B-67, Sarita Vihar, New Delhi-110076, within the jurisdiction of this Tribunal.
3. It is the case of the petitioner that the name of the Appellant Company was struck off from the Registrar 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. The aforesaid action was taken on account of failure of the Petitioner Company to file its annual returns and balance sheet since financial year ended on 31.03.2013, giving rise to the reasonable belief that the company was not operational.
4. The petitioner has submitted that since its incorporation till 31.03.2013 the petitioner company has been filing its annual accounts and annual returns

with Registrar of Companies, NCT of Delhi & Haryana regularly. On August 28, 2013, the Indian rupee had crashed to a record low of around 68.825 per US\$. The depreciation made India's economic confidence drop sharply. Consequent to which there is a massive fall out in the real estate sector which led to major financial crunch. Subsequently, the management of Company was unable to carry out its commercial business activities. During the period it came to the knowledge of the existing directors that certain statutory filings were required to be done with the respondent annually as well as upon happening of certain events, which have been inadvertently not being done due to shortage of funds. It is further submitted by the petitioner that the company was backed by a trusted Auditor who filled all the returns of income tax department. Owing to shortage of funds the Company neither filed its Returns with ROC nor applied for dormant status.

5. However, the Petitioner Company has been regularly complying with the provisions of the Income Tax Act, 1961 and at no point of time has ever stopped its functioning and also regularly maintaining all the requisite documents. However, it is stated that the company has prepared the annual accounts for the aforesaid years and the same has been audited by the statutory auditor and accordingly placed on record.
6. It is further submitted by the petitioner company that no opportunity of being heard before action under section 248(5) was given by the Respondent before

publishing the name of the applicant company in the official gazette on 30.06.2017.

7. It is accordingly submitted that from the filing of Income Tax Returns, and audited balance sheet, 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.
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. It is further stated in the report that the action was initiated as the Petitioner Company did not file the Balance Sheet and Annual Returns since financial year ended 31.03.2013, which gave rise to the reasonable presumption that the petitioner company was not in operation.
9. The Respondent Registrar of Companies in its report has 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 since financial year ended on 2010-11 till date along with the requisite late filing fee as prescribed under the law.

10. The Income Tax Department has not filed any objection against the restoration of the name of the company in the record of the ROC.

11. It is worth mentioning here that notice has been issued to its department and learned standing counsel on the behalf of income tax has marked its appearance. However despite giving opportunity no report has been filed by the income tax department and during argument no specific objection have been raised against the restoration of the name of the company.

12. The provision pertaining to restoration of the name of the company has been provided in Section 252 of the Companies Act, 2013 which 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 regular filing of income tax returns as well as audited balance sheet for the aforesaid year that it was carrying on business at the time when its name was struck off from the register of companies. The company has placed on record its audited Balance sheets and accounts for the financial year ending 31.03.2014 to 31.03.2016. It is accordingly evidently clear that the company was in operation at the time of struck off.

15. The facts of the case are also similar to the law laid down in the matter of Purushottamdass 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"

16. 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. 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 subject to filing of annual returns with fees as prescribed. Besides there is nobody to be prejudiced by the restoration of the name of the Company. On the contrary the restoration is clearly in the interest of the company. Even if the management of the company entrusted with the responsibility of filing of statutory returns had failed to do so, yet 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. The lapses for non-filing of annual returns in time can be countered 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.

17. 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. **50,000/-** 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.

18. 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.

19. The petition is disposed of accordingly.

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

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(Deepa Krishan)

Member (Technical)

Sd/-

(Ina Malhotra)

Member (Judicial)