

IN THE NATIONAL COMPANY LAW TRIBUNAL

SINGLE BENCH

NEW DELHI

Appeal No.-216/2017

CORAM: SHRI R.VARADHARAJAN, MEMBER (JUDICIAL)

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

IN THE MATTER OF:

SKY FORCE SECURITY & ALLIANCE SECURITIES PVT. LTD.

(Petitioner Company)

VERSUS

THE REGISTRAR OF COMPANIES

(Respondent)



MEMO OF PARTIES:

**SKY FORCE SECURITY & ALLIANCE SECURITIES PVT. LTD.
C-83, Block – C, Duggal Colony, Khanpur,
New Delhi- 110062**

.....Petitioner Company

AND

**NASEER KHAN
S/o Ganga Deen,
Res. of:- C-83, Block-C, Duggal Colony,
Khanpur, New Delhi-110062**

.....Applicant No. 1

AND

**NISHA SALIM
D/o Salim Khan
Res. of:- C-83, Duggal Colony,
Khanpur, New Delhi-110062**

.....Applicant No. 2

VERSUS

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

.....Respondent

**For the Petitioner : Mr. Ashutosh Gupta, Advocate
For
Indo Legal Services**

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



ORDER

Delivered on: 25.01.2018

Pursuant to short order dictated in the open court on 22.01.2018, the detailed order is rendered as follows:-

1. This is an Appeal/ Application/ Petition which has been preferred u/s 252 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 C-83, Block-C, Duggal Colony, Khanpur, New Delhi – 110062. It is further submitted by the Petitioner Company that on 24.04.2017 the name of the company was struck off from the register of the Companies maintained by the Registrar and later on 30.06.2017 in the RoC notice published in the official gazette the name of the Company was dissolved. The Company is into the business of providing personnel for security services, security guards, body guards and several similar services 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. It is also submitted by the Ld. Counsel for the Petitioner that the Company is also amenable to Service Tax and it has been regularly filing Service Tax Returns with the concerned authority and proof of filing returns have been enclosed as Annexure filed along with this Appeal. It is further stated in the petition that presently the Petitioner Company is having 221 number of employees on its payroll and striking off the name of the company from the Register as maintained by the Registrar of Companies will result in dissolution of the company causing retrenchment of the employees whose name is on the pay roll of the company. 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. According to the Ld. Counsel the Chartered Accountant on behalf of the Petitioner Company failed to file the annual return and financial statements before RoC and the non-filing was inadvertent and unintentional. However, in view of non-filing of the Annual returns and Financial Statement, 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 years and presently also its business is being alive and running it will seriously prejudice the interest of the Company and the Petitioners 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 as well as Income Tax Department, no observation/objection have been received till date despite directions passed by this Tribunal on 28.11.2017.
3. We have considered the plea of the Petitioner on one hand and the Respondent on the other hand. 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. 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 the following evidences before us:

- i. Income Tax payments made and returns filed for the period from 2013- 2014 to 2016- 2017.
- ii. Copy of Bank statement of accounts issued by Yes Bank, Andhra Bank, Kotak Mahindra Bank and United Bank of India representing the current account transaction of the Company as active for the period 2015-16 and 2016-17.
- iii. Copy of Independent Auditor's report along with Balance sheet for the year ending on 2013-14, 2014-15 and 2015-16.
- iv. Copy of challans of annual filing form 20B along with Annual Return in Form Schedule V for the FY 2010-11, 2011-12 & 2012-13 and for 23AC for the FY 2011-12 & 2012-13 with the MCA.



4. 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. 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 Petitioner/Appellant Company shall:

- (a) Within a period of 15 days from the restoration of the Petitioner Company's name in the register being maintained by the RoC, the appellant/ petitioner will file interalia its annual returns and balance sheets as well other compliances statutorily required to be made under the Companies Act, 2013 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 as well as towards filing any additional fee in filing the returns and documents which has been failed to be filed leading to its name being struck off from the Register of Companies within a period of one month from the date of this order. In case of any amount payable in excess of the sum specified towards defraying the cost incurred by the Respondent/ROC and towards other amounts as are required to be paid by the Company statutorily the same shall be remitted by the Company.

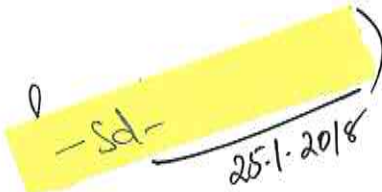


- (c) Till all compliances are made by the Petitioner Company, the Petitioner Company shall not alienate or dispose of any of its valuable assets.
- (d) It is further observed that by virtue of this order of restoration of the name of Appellant/ Petitioner Company in the register it will not entitle 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 Petitioner Company within a period of 2 months from the date of this order.
- (f) Further this order allowing the appeal 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 any forms,



documents, returns and such other compliance under the provisions of Companies Act, 2013.

The Appeal is disposed of accordingly.


(R.VARADHARAJAN)
MEMBER (JUDICIAL)

U.D.Mehta/M