

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

Appeal No: 757/KB/2017

Coram: Shri Jinan K.R, Hon'ble Member (Judicial)

In the matter of:

An appeal under Section 252(3) of the Companies Act, 2013

In the matter of:

VAISHALI RICE MILL PRIVATE LIMITED (Company Name Struck Off)
By Registrar of Company)

And

AJAY KUMAR, residing at Dumduma Hassanpur, Nandlapur Vaishal,
Vaishali-844113 within the aforesaid jurisdiction

.....Appellant/Petitioner

And

Registrar of Companies, having its office in 4th Floor, 'A' Wing, Mauryalok
Complex, Dakbungalow Road, Patna-800001, Bihar.

..... Respondent

Order delivered on 12th February 2018.

Counsel on Record for the Applicants:

For the Appellant

: 1. Shri Siddhartha Murarka, Pr.C.S.
: 2. Shri Abhijit Nagee, Pr. C.S.

ORDER

Per Jinan K.R, Member (J)

1. This is an appeal filed by M/s Vaishali Rice Mill Private Limited Company represented by Mr. Ajay Kumar, a shareholder holding 3,06,000 shares being 14.48% of the paid-up share capital in the company under Section 252 of the Companies Act, 2013 , by inter-alia seeking to direct the Respondent to restore the Company which was struck off, by the Registrar of Companies; and to permit it to carry on the normal business.

2. Brief facts, leading to of the present Company Appeal, are as follows: -

(a)M/s Vaishali Rice Mill Private Limited Company (referred to as the "Company") is a private Limited Company incorporated on 01.04.2010 in the State of Bihar.

(b)The Authorized share capital of the Company is Rs. 2,25,00,000/- (Rupees Two Crore and Twenty-Five Lakh only) divided into 22,50,000 number of equity shares of Rs. 10/- (Rupees Ten each) and the Issued, Subscribed & Paid up Capital of the Company is Rs. 2,11,38,000/- (Rupees Two Crore Eleven Lacs Thirty-Eight Thousand only) divided into 21,13,800 number of equity shares of Rs. 10/- (Rupees Ten each). Copies of the certificate of Incorporation along with master data of the Appellant Company annexed herewith and marked together as "Annexure-I".

(c)The main objects of the Company, in brief, as revealed from the appeal memorandum are to carry on the business to manufacture, produce, import, deal, buy and sell rice, rice bran

oil, rice husk and paddy to carry on the process of rice production and also carry out the business of trading and dealing mainly in rice, paddy, cereals, pulses, oil seeds, food grains, to buy and sell pulses and food grains and set up a mill for this purpose.

- (d) There are two key managerial personnel namely Shri Ajay Kumar and Smt. Payal Kumari appointed as the directors of the Company since the incorporation of the company. The appellant company had commenced operations after incorporation and has been doing business ever since, without any break. But due to inadvertent mistake the petitioner company failed to file its statutory returns and other documents for the years 2011 and 2013.
- (e) The appellant having failed to submit their balance sheet and annual return with the Respondent and when approached along with required statement learned that the status of the company was showing "Strike off" as from Master Data and hence filed this appeal producing all the required documents inclusive of balance sheets and annual returns for the years 2011 and 2013 marked and annexed as "**Annexure-VI**"
- (f) The appellant further states that it has been carrying on the business and is in operation and the same would appear from the balance sheet of the company. However, there are copies of the Board Resolution in Annexure- X A 121 in A-133, annual general meeting of the company held on 31.09.2011, 30.09.2013 and 30.09.2017 respectively for the financial years.

3. The appellant contends that due to inordinate delay in replying to the notice of the respondent and due to non filing of Financial statements and Annual Returns for the years ending on 31.03.2011 and

31.03.2013, the ROC under sub-section (1) of 248 of the Companies Act, 2013 had removed the name of the appellant. The respondent had removed the name of the appellant company by a *suo moto* action of the Respondent, after issuing the notification under Section 248(5) in the Official Gazette dated 14.03.2017 under STK-7. The copies of the notice has been marked and annexed as 'Annexure-IV'.

4. According to the appellant company, the act of respondent to strike off the name of the company is unjust and unjustified restriction to carry on the trade and business and it is liable to be set aside.

5. The ROC, Bihar in its affidavit in opposition stated that the appellant company's name was struck off and stand dissolved as on the date of striking off of the company's and as per available records in the MCA Portal, the company has filed its statutory documents, balance sheet from 31.03.2014 till 31.06.2016 but defaulted in filing for the financial year ending as on 31.03.2011 and 31.03.2013 from the date of incorporation.

6. The ROC Bihar in its objection also contends that complying to the provision of section 248 (1) of the Companies Act, 2013 issued notice (in e-form STK-5) and after the expiry of the statutory time period to file the documents had suo moto struck off the name of the company on 14.07.2017 and the respondent having no option but to issue notification bearing Reference No. ROC-Cum-OL/BR/248(5)/STK-7/PUB by which name of the appellant company was dissolved.

Heard Ld. Counsel for the appellant. Perused the record.

7. The Ld. Counsel for the appellant submitted that the company is carrying on its normal business and it was in the habit of filing its statutory returns and due to inadvertent mistake failed to file the returns

in time and it is neither deliberate nor intentional on the part of the appellant company. He further submits that the impugned action of the striking off the company would adversely affect on the company and is ready to comply by filing annual return within the stipulated time as granted by the Tribunal along with required fees. He prays for directing the respondent to restore the name of the company in the register of companies maintained by the ROC, Bihar.

8. Admittedly, the appellant failed to submit balance sheet and annual returns for the financial year ending on 31.03.2011 and 31.03.2013. Therefore, ROC, Bihar in exercise of the power conferred upon ROC under Section 248 of the Companies Act, 2013 the name of the company was struck off from its register after confirming all formalities as provided under the Act. The appellant company has failed to make any response to the notice evidently issued on 20.03.2017, and therefore striking off the name of the company under Section 248 of the Companies Act is found proper. Therefore, there is no illegality or infirmity in the order passed by the ROC Bihar.

9. To see that the company is carrying on its business or in operation, the appellant produced the above referred balance sheets, annual returns for the missing years and for the year ending as on 31.03.2017 and Director's Report. The appellant also produced income tax returns for the accounting years 2012-2013, 2013-2014, 2014-2015, 2015-2016 and 2016-2017 and marked as Annexures VIII. Certain bills and bank statement also produced to prove that company is a going concern. However, those documents are related not to the missing years for the financial year ending 31.03.2011 and 31.03.2013.

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10. On a careful scrutiny of all those documents I can have a legitimate inference that the appellant company is carrying on business on the date of filing the appeal. The invoices and bills produced shows that it is procuring rice from its customers during the year 2017. The bank statement supports appellant contention that it is operating a live account during the year 2017. From, the directors report for the year ending 31st March 2011 and financial statement it is understood that company was running in loss and Rs.3000.00 is shown as the loss for the said financial year. Very same status is shown for the financial year ending on 31st March 2013. From the financial statement, balance sheet and directors report it is also understood that the company has undergone business but was running in loss for the years the company failed to file returns.

11. However, the contention that appellant company failed to file the statutory documents for the missing years that owing to the negligence on part of the company's accountant is found unbelievable for want of supporting evidence. The very attempt of the appellant was to show that at present the company is in operation and carrying on its business and expect the missing years the company has filed the statutory returns. The said attempt stands established in this case.

12. At this point it is important to note that in **Purushottamdass And Another v. Registrar of Companies**, [(1986) 60 Comp. Case 154 Bom], the Hon'ble High court of Bombay in an appeal filed under section 560 of the old Act, has held that: -

"The objects 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 a period of 20 years, and to give them an opportunity of carrying on the business only after the company judge is satisfied that such restoration is necessary in the interests of justice. The company judge

may be satisfied that either the company was carrying on its business or was in operation or otherwise, and it is, in the circumstances of the case, equitable and just to restore the company. It, however, does not mean that the rights and liabilities of the company are lost during the interim period, inasmuch as section 560(6) of the Companies Act provides that after an order of restoration is passed, it shall be deemed as if the company was never struck off the register of companies. The section also provides the company judge with wide powers to put certain conditions or directions at the time of ordering the restoration”.

13. This appeal came up for consideration under section 252 (3) of the Companies Act, 2013. Similar power under Section 560(6) of old Act is provided to the Company Tribunal under section 252(3) of the Companies Act, 2013. If this Tribunal is satisfied that the company is in operation without doing any active business even then an order of restoration can be allowed if interest of justice demands but upon certain conditions and directions. It is good to read section 252(3). It read as follows: -

*“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”.*

14. The above said discussion leads to a conclusion that the company is in operation and carrying on active business as per its object. This appeal has been filed in time. Therefore, the appeal is liable to be allowed

in the interest of justice, equity and good conscience as held in the above cited decision.

15. In the result by exercising the powers conferred on this Tribunal under Section 252 of the Companies Act, 2013, this appeal is allowed upon the following directions:

- (1) The Registrar of Companies, the respondent herein, is ordered to restore the original status of the Applicant Company as if the name of the company has not been struck off from the Register of Companies with resultant and consequential actions like changing status of Company from 'strike off to Active; to activate DIN Nos of the applicants etc.
- (2) The Applicant company is directed to file all pending statutory document(s) including Annual Accounts and Annual returns for the financial years 2011 and 2013 along with prescribed fees/ additional fee/fine as decided by ROC within 30 days from the date on which its name is restored on the Register of companies by the ROC;
- (3) The Company's representative, who has filed the Company application is directed to personally ensure compliance of this order.
- (4) The restoration of the Company's name is also subject to the payment of cost of Rs.50,000/-(Rupees Fifty thousand only) through online payment in www.mca.gov.in under miscellaneous fee by mentioning particulars as "payment of cost for revival of

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company pursuant to orders of Hon'ble NCLT in Appeal NO.757/KB/2017".

- (5) The appellant is permitted to deliver a certified copy of this order with ROC within thirty days of the receipt of this order.
- (6) On such delivery and after duly complying with above directions, the Registrar of Companies, Bihar is directed to, on his office name and seal, publish the order in the official Gazette;
- (7) This order is confined to the violations, which ultimately leads to the impugned action of striking of the Company, and it will not come in the way of ROC to take appropriate action(s) in accordance with law, for any other violations /offenses, if any, committed by the applicant company prior or during the striking off of the company.

16. Urgent Photostat copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

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**(Jinan K.R.)
Member (Judicial)**

Signed on 12th day of February 2018.

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