

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
KOLKATA**

**Appeal No: 644/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 and the National Company Law Tribunal Rules, 2016;**

**In the matter of:**

**DEVI VAISNO MATA ELECTRICALS PRIVATE LIMITED (Name Struck off), a Company incorporated under the provisions of the Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013 having its Registered Office at Village & Post, Marar, District. Chapra (Sarn) PIN 841 219, Bihar, within the aforesaid jurisdiction.**

**..... Appellant**

**And**

**In the matter of :**

**SHRI DINESH SINGH, Son of Shri Jagdish Singh, residing at Village & Post-Marar, District Chapra (Sarn) PIN 841219m Bihar.**

**... Appellant**

**And**

**MS MUNNI SINGH Wife of Shri Dinesh Singh residing at Village & Post-Marar, District Chapra (Sarn), PIN 841 219, Bihar.**

**... Appellant**

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- Versus -

The REGISTRAR OF COMPANIES (ROC), BIHAR having his office at 4<sup>th</sup> Floor, "A" Wing, Maurya Lok Complex, Duckbungalow Road, Patna 800 001, Bihar.

.....Respondent

Order delivered on 20<sup>th</sup> February 2018.

**Counsels for the Appellant / Petitioner :**

For the Appellant / Petitioner

1. Mr. Nilay Sengupta, Advocate.
2. Ms Swati Agarwal, Advocate.
3. Ms Pooja Shukla, Advocate.

**O R D E R**

**Per Shri Jinan, K.R, Member (Judicial)**

1. The instant appeal has been filed by two appellants, namely, Shri Dinesh Singh and Smt. Munni Singh, joint shareholders of Devi Vaisno Mata Electricals Private Limited under sub-section (3) of section 252 of the Companies Act, 2013 (the Act), seeking restoration of the name of the company in the Register of Companies, Bihar, by setting aside the notification dated 14.07.2017 issued by the ROC Bihar the respondent by which the name of the appellant company has been stuck off and is dissolved. The appellant being aggrieved by the order bearing Reference No.ROC-Cum-OL/BR/248(5)/STK-7/PUB dated 14.07.2017 published in the Gazette of India striking the name of the petitioner company off the register of companies, as per sub section (5)

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of section 248 of the Companies Act, 2013, filed this appeal for the above said relief.

Brief facts, leading to the company appeal, are as follows:

2. M/s Devi Vaisno Mata Electricals Private Limited. (hereinafter referred to as the "Company") is a private limited company incorporated on 05.03.2010 bearing CIN No. U45303BR2010PTC015384. The petitioners, namely, Shri Dinesh Singh and Smt. Munni Singh are joint shareholders of DEVI VAISNO MATA ELECTRICALS PRIVATE LIMITED who jointly holds 16,000 equity shares in the Company of the face value of Rs.10/- each fully paid up in cash. The Appellants became directors of the Company since its incorporation.

3. The main objects of the company are construction, erection, acquire, run, maintain, run and establish factories, offices, sheds, Industrial plants Industrial Plants, Workshops, Machinery Equipment, apparatus and to acquire by purchase, barter, lease, license, grant, concession or otherwise either absolutely or conditionally and either alone of any works, vehicles, conveniences, facilities and other movable properties of any kind and maintain business to acquire patent rights, copyrights, trademarks, formula, technical information, technical knowledge or to enter into arrangements and take all necessary steps with any Government or authority Supreme, municipal, also to purchase, acquire any part of the business, property, rights to be carried on in conjunction therewith or which is capable of being continued so as directly or indirectly to benefit the company. And to fulfill other objectives to carry on business as manufacturers, importers, exporters, sellers, buyers, dealers, agents, Indenting agents, brokers and stockist and to carry on business of manufacturers and dealers in tractors, automobiles,

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earth moving and to manufacture, buy and sell machinery, store engineering products of all kinds and description and to carry on the business of supplies and of dealers in all types of machinery and in all products etc.

4. The appellant contends that due to non-filing of Financial Statements and Annual Returns for the year ending on 31.03.2012 and due to inordinate delay in filing reply, ROC had removed the name of the company. The appellants has received a Show Cause Notice from the respondent in the month of March 2017 wherein a show cause was sought for, as to why the name of the Company shall not be strike off, in absence of non-commencing the business from the date of its incorporation, that notice was entrusted to their Counsel Mr. Savinder Prasad Sharma who neglected to protect the interest of the appellants and he took a plea as if he had appointed one Chartered Accountant to look after the strike off aspects but he also failed in taking any steps hence the delay in submitting the returns.

5. The appellant came to know that the respondent, by a suo moto action, removed the name of the company for want of filing Annual Returns and Balance Sheets. The Appellants further stated that it was revealed from the web site of the Ministry of Corporate Affairs that the name of the Company was struck off and the same is annexed with the Application vide **Annexure-5**.

6. The appellant has stated that without any mala fide motive and due to lack of professional duty of the statutory auditor, the company had failed to file the Annual Return and financial statement and annual return ending 31.03.2012 with the concerned Registrar of Companies in consonance with section 248 of the Companies Act, 2013.

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The Appellant stated that to protect the interest of the Company the name of the Company be restored in the Registrar of Companies as this Tribunal may deem fit and proper.

7. It is further stated that the appellants company assigned the work of filing of statutory returns and documents to the statutory auditor of the company. However, due to oversight the appellant failed to check the same and hence Annual Returns and Balance Sheets could not be filed for the year ended 31.03.2012. The appellant has prepared the annual accounts for the aforesaid years and the same has been audited by the statutory auditor. Copies of the Balance Sheets for the said financial years ending on 31.03.2012 been placed on record.

8. The appellant has also stated that the appellant has been regularly filing the necessary Income Tax Return from time to time and also balance sheets. Copies of the latest income tax returns and the documents showing that the company has been generating revenue from the business it has been carrying on, and also balance sheets, Income Tax and computation sheets of said Company since the year 2012-2013, 2013-14, 2014-15, 2015-16 and 2016-17 are produced for proving that the appellant's company is a going concern. The copies of the same has been marked and annexed with the appeal as **"Annexure-2"**.

9. The appellant further contented that the documents produced are sufficient enough to prove that the company is a going concern and those documents are manifestly established that the petitioner company has been in operation and it further proves that the appellant's company is not a defunct or non-operational or dormant company within the meaning of Section 252 of the Companies Act, 2013.

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10. Upon the above said contentions the appellants pray for restoration of the Company without the liability to pay cost.

11. The Registrar of Companies (In short ROC, Bihar) has filed reply affidavit contending in brief is the following: -

12. The ROC contends that a notice dated 20.03.2017 has been issued to the Appellant's Company in consonance with section 248 of the Companies Act, 2013 requesting the Appellant Company to file its return within the mandatory period of 30 days. On having done so, at a later date another notice dated 20.03.2017 in form STK-5 dated 26.04.2017 was issued to the Appellant Company and that due steps were taken in accordance with statutory provisions before the striking off the company's name under section 248(4) (Form No 5) and later a statutory notice reference No.ROC-Cum-OL/BR/248(5)/STK-7/PUB dated 14.07.2017 has been issued. Since the appellants failed to send a reply within the period of 30 days from the date of the notice the respondent has reasonable cause to believe that the company has failed to commence its business had removed the name of the company.

13. The Respondent has stated that the reason for non-filing of returns is evasive and unacceptable and contends 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 31.03.2012 till date along with the requisite late filing fee as prescribed under the law.

14. Heard the Ld. Counsel for the appellants and perused the records.

15. The respondent after complying all the statutory requirements to be complied before striking off the company had struck off the

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company. Admittedly the appellant failed to submit the statutory returns and balance sheets since the financial year ending 31.03.2012 with the respondent on time. 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 20.03.2017. The aforesaid action was taken on account of failure of the appellant's company to file its statutory returns and other documents, which give rise to the reasonable belief that the company was not operational. Therefore, there is no illegality or any infirmity in regards striking off the company.

16. The Ld. Counsel for the appellants submits that the income tax returns, Annual returns and the Balance sheets of the company produced along with the appeal proves their case that the company was doing business and is a going concern and therefore the appeal is liable to be allowed. The appellant has placed on record its audited Balance sheets and accounts for the financial year ending 2012-13,2013-14, 2015-2016, 2016-17. The above said Balance Sheets shows the following rate of Profit / Loss :-

<b>S.No.</b>	<b>For the Year</b>	<b>Profit / (Loss) In Rupees.</b>
1	2011-2012	(9,600.00)
2	2012-2013	1,31,288.00
3	2013-2014	1,120.00
4	2014-2015	19,811.27

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5	2015-2016	26,27,935.70
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The above said Profit and Loss Account for the above said years coupled with copies of Income Tax Returns, shows that the appellants' Company is doing business and is gaining growth.

17. At this juncture it is pertinent to refer to the case of Vats Association Pvt. Ltd v. 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 secretary's negligence, restoration was ordered. In the present case it is pertinent to note that the company is a profit-making company when the appeal has been filed.

18. The facts of the case in hand also similar to the facts in the matter of Purushottam Dass and Anr vs. 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 the 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."*

19. 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. Even if the management of the company entrusted with the responsibility of filing of statutory returns had failed to do so but since the company is a going concern and that the appeal has been filed on time, the Tribunal clearly has the power to restore the name of the company.

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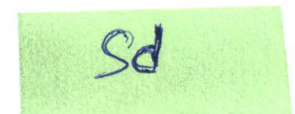
20. However, the reasons advanced on the side of the appellants for its failure to file statutory returns for more than two years is found not at all satisfactory. It was alleged that due to an inadvertent mistake on the part of the advocate who had been appointed and authorized to take utmost due care and duty to file the statutory returns and to take necessary steps for the working of the company the default occurred. But the lapses for non-filing of annual returns in time can be countered by imposing heavy cost. In these factual grounds and bear in mind the propositions held in the above cited decisions and in the interest of justice the appeal filed by the petitioner deserves to be allowed subject to the payment of cost.

21. 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 returns and Balance sheets from the financial year 30.12.2012 to till date 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;

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- (3) The Company's representative, who has filed the Appeal 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.75,000/-(Rupees Seventy-five Thousands only) through online payment in www.mca.gov.in under miscellaneous fee by mentioning particulars as "payment of cost for revival of company pursuant to orders of Hon'ble NCLT in Appeal NO.644/KB/2017".
- (5) The applicant 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 /offences, if any, committed by the applicant company prior or during the striking off of the company.



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

*Signed on this, the 20<sup>th</sup> day of February 2018.*

*PS\_Aloke*