

THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

Coram:

Shri V.P Singh,
Hon'ble Member (J)
&
Shri Jinan K.R.
Hon'ble Member(J)

Company Petition No. 527/KB/2017

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

In the Matter of:

M/S Visnu Deo Narayan Infratech Pvt. Ltd., a company
Incorporated under the Companies Act, 1956 and having
Its registered office situated at 108, Williams Town, Behind
SBI Training Centre, City-Deoghar, State-Jharkhand.
Within the jurisdiction of this Hon'ble Tribunal

.....**Petitioner**

-Versus-

Registrar of Companies, Jharkhand, at 4th Floor, 'A'
Wing, Maurya Lok Complex, Dakbunglow Road, City-Patna
State: Bihar, within the jurisdiction of this Hon'ble Tribunal

.....**Respondent**

Counsels appeared:

1. CS. Rohit Kumar Keshri, PCS] For the Petitioner
2. Mr. Alok Naresh (in person]

Judgment delivered on 15/01/2018

ORDER

Per Shri V.P Singh, Member(J):

One of the authorised directors of M/s Visnu Deo Narayan Infratech Pvt.
Ltd. has filed the present appeal under Section 252(3) of the Companies Act,

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2013 seeking restoration of the name of the petitioner company which has been struck off by the Registrar of Companies, Jharkhand.

2. M/s. Visnu Deo Narayan Infratech Pvt. Ltd. was incorporated on 04th November, 2010 having its registered office, as per master data of the company and report of ROC, at 108, WilliamsTown, BehindSBITrainingCentre, Deoghar, Jharkhand 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 18.04.2017. The previous action was taken on account of the failure of the Petitioner Company to file its statutory returns and other documents since the financial year ending 2010-11 to 2015-16, giving rise to the reasonable belief that the company was not operational.

4. The Appellant has submitted that without any mala fide motive and due to inadvertent mistake of the Chartered Accountant, the company had failed to file the Annual Return and financial statement for the financial year ended 2010-11 to 2015-16, with the office of the concerned Registrar of Companies in compliance of the provisions of sub-section 4 of the section 92 and subsection 1 of section 137 of the Companies Act, 2013.

5. It is further submitted by the Appellant that the opp. Party has not followed the procedure prescribed under section 248(1) of the Companies Act, 2013,

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notices as required under the aforesaid section was not sent in time as the notice sent by the ROC, Jharkhand under section 248(1) bearing letter no 3240 dated 20/03/2017 was delivered to the petitioner after 04/05/2017. However, the petitioner after receiving the notice immediately within the stipulated period of 30 days filed the balance sheet for the period 2013-14, 2014-15 & 2015-16.

6. The Appellant company has also submitted that the Appellant Company has been active since incorporation and has also been maintaining all the requisite documentation, as per the provisions of Companies Act, 2013.

7. The Appellant company has also submitted that it didn't receive any show cause notice, nor was it afforded an opportunity of being heard before the action was taken by the opposite party.

8. The Appellant further submitted that on account of failure on the part of a chartered accountant who regularly used to perform the task of filing of returns with the office of ROC didn't reveal this fact to the directors of the petitioner company. It was only in May 2017, when the balance sheet and the Auditor's Report in respect thereof was ready to be filed with the opposite party then the fact of non-filing of the returns and other documents with the opposite party, as well as the fact that the petitioner company's name had been struck off from the register of companies was known to the petitioner.

9. That the Appellant company has been regularly filing the necessary Income Tax Return with the Income Tax Department from time to time. Copy of latest Income Tax Return for the Assessment year 2010-11 to 2015-16 marked as **Annexure A-12**

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have been placed on record. Besides above an order to show that the company is functional, Bank statements with effect from the year 2012 to 2017 marked as **Annexure A-3**, copy of GST Registration, copies of Invoices NOC from Commercial Taxes, Letter to Mining Officer, Mining Clearance, Bid submission Confirmation, work order, Company Master Data for the last three years have been placed on record.

10. It is accordingly submitted that from the filing of Income Tax Returns, Bank statements with effect from the year 2015 to 2017, copy of GST Registration, copies of Invoices NOC from Commercial Taxes, Letter to Mining Officer, Mining Clearance, Bid submission Confirmation, work order, Company Master Data for the last three years, it is manifestly established that the petitioner company has been in operation, and it is not a defunct or non-operational or dormant company within the meaning of Section 252 of the Companies Act, 2013.

11. The Registrar of Companies has filed its response on 10.11.2017 and submitted that the name of the company was struck off in pursuance of the direction issued by the Ministry of Corporate Affairs vide its Office memorandum, No. 516/2017 dated 10.11.2017.

12. It is further stated that due steps had been taken under the statutory provisions of Section 248 (1) & 248 (4) of the Companies Act 2013, before striking off the name of the petitioner company from their register. It is contended that the notice has been sent under Section 248(1) of the Companies Act, 2013 but the company and its director did not file any reply. The balance sheet for the

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year ending 31.3.14,31.3.15 and 31.3.2016 was filed by the company after issuance of show cause notice u/s 248(1) of the Companies Act 2013.

13. It is further stated in the report that the action was initiated as the Petitioner Company did not file the earlier Balance Sheet and Annual Returns since financial year ending on 2010-11,2011-12&2012-13 and committed default in not holding of AGM in time as required u/s 92,96 and 129 of the Companies Act 2013, which gave rise to the reasonable presumption that the Appellant company was not in operation.

14. The provision about the restoration of the name of the company has been provided in Section 252 of the Companies Act, 2013 envisages the Appeal to the Tribunal.

252. Appeal to Tribunal.— (1) Any person aggrieved by 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:

Provided that before passing any order under this section, the Tribunal shall give a reasonable opportunity of making representations and of being heard to the Registrar, the company and all the persons concerned:

Provided further that if the Registrar is satisfied, that the name of the company has been struck off from the register of companies either inadvertently or on the basis of incorrect information furnished by the company or its directors, which requires restoration in the register of companies, he may within a period of three years from the date of passing of the order dissolving the company

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under Section 248, file an application before the Tribunal seeking restoration of name of such company.

(2) A copy of the order passed by the Tribunal shall be filed by the company with the Registrar within thirty days from the date of the order and on receipt of the order, the Registrar shall cause the name of the company to be restored in the register of companies and shall issue a fresh certificate of incorporation.

(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.

15. A perusal of the provisions above shows that any person aggrieved by 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. Subsection 3 of Section 252 contemplates that one of the three conditions are required to be satisfied before exercising jurisdiction to restore the 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.

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b) Or it was in operation, or it is otherwise just that the name of the company is restored on the register.

16. When we apply the aforesaid principles to the facts of the present case it can be seen from the income tax returns, , Bank statements (2012-17), copy of GST Registration and copies of Invoices NOC from Commercial Taxes, Letter to Mining Officer, Mining Clearance, Bid submission Confirmation, work order, Company Master Data that it was carrying on business at the time when its name was struck off from the register of companies. The company has also placed on record its audited Balance sheets and accounts for the financial year ending 2010-11 to 2015-16 It is accordingly evidently clear that the company was in operation.

17. 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 secretary's negligence, restoration was ordered.

18. 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

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the business only after the company judge is satisfied that such restoration is necessary for 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. The assumption of Registrar of Companies that the company was not in operation was apparently erroneous. Secondly, it is seen that no show cause notice was issued by the Registrar of Companies to the Petitioner Company or its Directors before striking off the name of Company as required under sub-section 1 of Section 248 of the Companies Act, 2013. Besides, it is seen that the appeal has been filed within the stipulated period prescribed under Section 252 of the Act. Besides there is nobody to be prejudiced by the restoration of the name of the Company. On the contrary, the restoration is apparently 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 apparently 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 a cost. In this factual background and the interest of justice, the appeal filed by the petitioner deserves to be allowed subject to payment of cost.

20. Accordingly, the Appeal is allowed. The restoration of the Appellant company's name to the Register will be subject to the Appellant company filing all outstanding documents required by law and completion of all formalities, including statutory payment of any late fee or any other charges which are

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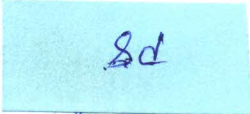
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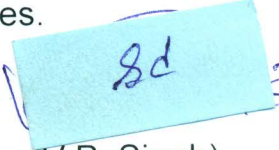
leviable by the respondent for the late filing of statutory returns and also on payment of cost of Rs. 20000/- to be paid to the Prime Minister Relief Fund. After depositing all the documents before the ROC and after filing statutory dues, late fee and additional fee applicable in the case along with the cost, the name of the petitioner company, its directors and members shall then, as a consequence, be restored by the Registrar of Companies.

21. 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.

22. The Appeal is disposed of accordingly.

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


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


(V.P. Singh)
Member (Judicial)

Signed on this, the 15th day of January, 2018