

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

Appeal No: 542/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:

NAVBHARTI BUILDERS (INDIA) PRIVATE LIMITED, having its registered office at Khaptola, Nautan, District- West Champaran, Bettiah, West Champaran, Bihar 845 438.

... Petitioner / Appellant

- Versus -

THE REGISTRAR OF COMPANIES, BIHAR having its office at Maurya Lok Complex, Block-A, Western Wing, 4th Floor, Dak Bangalow Road, Patna 800 001, Bihar.

.....Respondent

Order delivered on 13th February 2018.

Counsel on Record for the Applicants:

For the Appellant / Petitioner 1. Mr. Surendra Singh, Advocate.

ORDER

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

1. The instant appeal has been filed by the company above mentioned (Navbharti Builders (India) Pvt. 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 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 struck off and is dissolved. The appellant being aggrieved by the order 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) of section 248 of the Companies Act, 2013, filed this appeal for the above said relief.

3. The stand taken by the appellant in the instant petition is the following:

- (i) The petitioner company was incorporated on 09th October, 1991 under the Companies Act, 1956 as a Private Limited Company to carry on the business of acquire manage and carry on the business of general and Govt. contractors, engineers and builders to supply construction materials through Govt. and private contract, to lay out, develop

construct, sale and supply the same to public or Govt. Department as per Memorandum of Association of the said company.

- (ii) The Registrar of Companies, Bihar ("ROC") has struck off the name of the company from the register ignoring the fact that the said company is carrying on business activities. The ROC is striking off the name of the said company without application of mind and erred in striking off the name of the company without carrying out proper investigation.
- (iii) The company has been active since its incorporation. The company has maintained bank accounts and in support, the copies of Bank Statements from June 9th, 2017 to September 25th 2017 are annexed to the petition (Annexure "A7").
- (iv) The company in order to prove its existence during the period October 9th, 1991 and onwards, the copies of the audited Balance Sheets for the financial year 2013-17 are annexed to the petition
(Annexure "A5", respectively).
- (v) The company has filed its statement of Profit & Loss upto financial year 2011-2012 and Annual returns up to Financial Year ending 31.03.2014 a copy of which is annexed to the petition (Annexure "A5").
- (vi) The company for the financial year 2012-13, 2013-14, 2014-15, 2015-16 also held and convened, from time to time, the Annual General

Meetings of the shareholders of the company and minutes of the same are annexed to the petition (Annexure "A6").

- (vii) The accounts of the company were prepared and audited every year but due to lack of knowledge, professional guidance and without malafide intention failed to file the required statutory returns. However, it was regular in filing its Income Tax returns for the Assessment Year 2013-14 to 2016-17 and copies of Income Tax Returns are annexed to the petition (Annexure A7).
- (viii) The company was carrying out its business and is still in operation is evident from the agreement dated 23.05.2017 vide agreement No- 01SBD/2017-18 made between the Water Resources Department(Chief engg Zone,Gopalganj. Govt of Bihar and the Appellant Company,Nav Bharti Builders (India) Pvt. Ltd and the similar fact would also be evident from the payment certificate dated 22.09.2017 vide Memo No 2258 issued under seal and signature of the Executive Engineer, RWD, Works Division, Bettiah in favour of the Appellant Company.
- (ix) Recently, it came to the notice of the company from physical investigation that its name has been struck off under the Companies Act, 2013. The company has been trying to maintain all its requisite documents as per the provisions of the Companies Act, as applicable to it, but owing to the inadvertent and unavoidable conditions, that its directors were unaware /not fully versed with the provisions of the Companies Act 1956/2013 the statutory documents as

required under the law could not be filed with the respondent in time only for the year 2012-13 to 2015-16. The status of the company on web portal of MCA shows "strike off" came to the notice of the Appellant at the time when he went to his chartered Accountant to verify filing the due Balance Sheets as well as profit and loss Account/Financial Statement including the due Annual Returns of the Appellant Company intimated him that the name of the company has been struck off and the Appellant company has been declared Dissolved.

- (x) The appellant also submitted that copy of the notification of striking off the name of the Appellant Company has not been provided. However, the copy of the same has been obtained from the MCA Portal-21 of the Ministry of Corporate affairs, GOI.
- (xi) The Appellant also contended that the name of the Appellant Company has been struck off and declared dissolved under section 248(5) of companies Act, 2013 vide Notification No.ROC-cum-OL/BR/248 (5)/STK-7/PUB dated 14.07.2017 without following the mandatory requirement provided under section 248(5). It is pertinent to mention here that no notice under section 248(1) of Companies Act, 2013 was served upon the appellant company before striking off its name.
- (xii) Moreover, the Appellant company states and submitted that it is ready to undertake to file the Financial Statements for the Years 2012-13 to 2016-17 and the Annual return for 31.03.15 to 31.03.2017 with the additional fee twelve times more to the

Original fees u/s 403 of the Companies Act,2013 if, the name of the company is restored.

4. In response to notice sent upon the Respondent (ROC-Cum-OL, Bihar) by the appellant, the ROC has filed his report dated 29.11.2017 contenting in brief is the following: -

(i) The Show Case Notice was issued to the company and its Directors on 20.03.2017 in consonance of section 248 of the Companies Act, 2013 requesting the Appellant Company to file its returns within the mandatory period of 30 days and subsequently failing to do so the respondent also sent a second notice dated 26.04.2017 in form STK-5 upon the Appellant Company. That the company failed to make any responses to the notices issued dated 20.03,2017 and 26.04.2017, the respondent had no option other than to issue notification bearing Reference No.ROC- Cum-OL/BR/248(5)/STK-7/PUB dated 14.07.2017.

(ii) The company had not filed the balance sheet and the annual return as required U/s 92, and 129 of the Companies Act, 2013. However, the ROC has no objection if the name of the Appellant Company is restored in the Register of Companies by complying all the mandates as required under section 403 of the Companies Act, 2013.

(iii) The appellant company has filed its annual Returns up to financial year 2014 but thereafter the appellant company failed to file the statutory returns and Balance Sheets and thus ROC has considered to remove the name from the register as per section 248 of Companies Act, 2013.

(iv) The appellant company when failed to make any response to the notices issued on 20.03.2017 and 26.04.2017, the respondent issued notification dated 14.07.2017 by which the name of the appellant has been struck off from the register of companies and the appellant company was dissolved.

(v) The plea taken by the appellant company that the Company's Director were not fully well versed with the provisions of the Companies Act, 1956/2013 is evasive and unacceptable.

(vi) ROC office has no objection to restore the name of company, but the company may be directed to complete all the statutory requirements and the legal requirement of the Act.

5, Appellant filed a rejoinder contending that the contention taken by the respondent in its reply is vague, misleading and evasive. No notice was received by the appellant and hence appellant could not make any response to the notices. The appellant reiterated that the directors of the appellant company are semi-literate persons and not are fully versed with English language and hence the default.

Heard Ld. Counsel for the appellant, perused the records.

1.1. The company though pleaded that no notice was served on the appellant no supporting documents produced to prove that Annual Reports and Balance Sheets were filed. The contention that default in submission of statutory returns and balance sheets because its directors are semi-literate and due to ignorance of law is found devoid of any merit. Ignorance of law is not at all an excuse. Hence non-filing of the statutory return as contended by the respondent is found believable in the absence of evidence proving that the statutory return for the missing years were filed in time. The respondent seems to have complied all statutory formalities and then issued a public notice (Form No. STK-5) pursuant to subsection (1) and (4) of section 248 of the Companies Act, 2013 and Rule 7 of Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016, inviting objections to the proposed removal of the name of the company off the register of companies, within thirty days from the date of publication of this notice. Neither the company nor its Directors could send any representation in response to the notice received or public notice published. Finally, Notice (Form No. STK-7) dated 14.07.2017 was published pursuant to sub section (5) of section 248 of the Companies Act, 2013 and Rule 9 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 striking the name of the company off the register of companies and the company is dissolved, on 14.07.2017. Therefore, there is no illegality in striking of the company by the respondent.

1.2 The petitioner has claimed that the company has been active since its incorporation and has been maintaining Bank Accounts with Corporation Bank and in support of the said plea, the petitioner has placed evidences by way of the followings:

- (i) Statements of Accounts from Corporation Bank (from 09.06.2017- 25.09.2017 (Annexure 'A7' to petition).
- (ii) Copies of Balance Sheets for the financial year 2013-14, 2014-15 and 2015-16, 2016-17 (Annexure 'A5' respectively to petition)
- (iii) Copies of Agreement dated 23.05.2017 along with the payment certificate dated 22.09.2017 (Annexure 'A7' to petition).

6. A perusal of the Balance Sheet as on 31.03.2017 it is understood that it has fixed and other assets and generating revenues from operations. It has also closing stock (stock in trade), as on that date. The appellant has admitted that due financial statements and annual returns have not been filed. Taking into account of these aspects, and the documents produced on the side of the appellant inclusive of Annexure A7, it would not be reasonable to assume that the company has not been carrying on any business or operation for a period of two immediately preceding financial year and thus, it cannot be regarded as a defunct company. However, there is no satisfying explanation from the petitioner as to why it has not filed its up-to-date statutory returns within the stipulated time, as it is a statutory requirement. The non-filing of statutory documents lead the Registrar of Companies to infer and believe that the company was inoperative and therefore, its name was struck off on

14.07.2017 after following the due procedure. Moreover, the company and its Directors/ officers did not care to respond to the notice issued by Registrar of Companies on 20. 03.2017 and public notice (STK-7) on 14.07.2017 This is a serious lapse on the part of the company and its Directors / Officers for noncompliance of the statutory requirements under the Companies Act, 2013.

7. 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 of 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".

8. This appeal came up for consideration under section 252(3) of the Companies Act, 2013. Similar power as provided

under section 560 (6) of the 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”.*

9. In view of the foregoing facts and circumstances and the statutory provisions as mentioned above and bear in mind the principle laid down in the above cited decision, this Tribunal is of the view that it would be just and proper to order restoration of the name of the company to the register of functional companies, as maintained by the Registrar of Companies (the respondent).

10. 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 missing financial years along with prescribed fee / fine as directed 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 company pursuant to orders of Hon'ble NCLT in CP NO.542 /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 13th day of February, 2018.

PS_Aloke