

(2018) 03 NCLT CK 0001

National Company Law Tribunal New Delhi Bench

Case No: Appeal No. 676/252/ND Of 2018

Income Tax Officer,
Ward-6(4)

APPELLANT

Vs

Registrar Of
Companies And Ors.

RESPONDENT

Date of Decision: March 13, 2018

Acts Referred:

- Companies (Removal Of Names Of Companies From The Register Of Companies) Rules, 2016 - Rule 7, 9
- Companies Act, 2013 - Section 248(1), 252(1), 252(3)
- Income Tax Act, 1961 - Section 147, 148, 194C

Hon'ble Judges: Dr. Deepti Mukesh, J

Bench: Single Bench

Advocate: Zoheb Hossain, Piyush Goyal, Kusum Yadav

Final Decision: Disposed Of

Judgement

1. This appeal is filed by Income Tax Department, through its Income Tax Officer, Ward No. 6(4) CR. Building, I.P. Estate, New Delhi, under

Section 252(1) of the Companies Act, 2013 (for brevity ~the Act~™) against the order of striking off the name of the company M/s Credence

Contracts Private Limited (for brevity ~the Company~™) passed by the respondent under section 248 (1) of the Act read with Rule 7 of

Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 published on 20.06.2017 vide notification no. ROC-

DEL/248/STK-5/2336 by Registrar of Companies, the respondent herein.

2. The company is incorporated as a Private Limited Company under the provision of Companies Act, 1956 with the Registrar of Companies, NCT of

Delhi and Haryana on 30.10.2003 having CIN U74999DL2003PTC122873 and is having registered office at 231, VPO Khaira, New Delhi-110043.

3. The Authorized share capital of the Company is Rs.5,00,000/-divided into 50,000 equity shares of Rs.10/- each and issued, subscribed and paid up

share capital of the Company is Rs.50,000/- divided into 5000 equity shares of Rs.10/- each.

4. As per the notice of non- compliance of provisions of the Companies Act, 2013 in respect to filing of annual returns and financial statements, the

name of the company was struck off in terms of provision of Section 248(1) of the Companies Act, 2013 read with Rule 7 and Rule 9 of the

Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016.

5. The appellant has submitted that service was duly effected on the respondents and service affidavit has been placed on record. Other than the

Registrar of companies, none appeared on behalf of the company or ex-directors or other respondents. While Respondent No. 2 & 3 were proceeded

ex-parte, Respondent No.1, Registrar of companies submits that they have no objections to the prayer of the applicant being granted by this bench.

6. The Appellant prays for the restoration of name of the company in order to take forward proceedings initiated against the company. As per

averments by the appellant, on the basis of the Non-Filers Monitoring System information received by the Income Tax department, the respondent

company had received the contractual receipts of Rs. 10,00,254/- under section 194C (Payments to Contractors) of Income Tax Act, during the

Assessment Year 2010-11.

7. The appellant has further submitted that it appears that there is tax evasion which has escaped assessment within the meaning of Section 147 &

148 of the Income Tax Act and action in accordance with law is required to be initiated against the company. It is submitted that assessment of

income of the Company has escaped for the Assessment Year 2010-11 and is pending. Notice dated 29.03.2017 under section 148 of the Income Tax

Act, 1961 was issued to the respondent at its registered address as well as through affixation, to which there is no response from the Respondent No.

2 & 3 being the ex-directors of the company.

8. The assessment order for assessment year 2010-11, was passed on 08.12.2017 and was issued on the respondent which is at Annexure -A6, to

which no response was ever received.

9. The Ld. Counsel for the Income Tax submits that in order to recover the taxes on the undisclosed income of the company and to levy and recover

the revenue from the transactions of the company during the year 2010-11, it necessitates restoration of name of the Company in the Register of

Companies as maintained by ROC to proceed further in accordance with law. As on date the proceedings cannot continue against the company, for it

being struck off and the said revenue cannot be recovered.

10. It is the case of appellant that the Income Tax Department is an aggrieved party within the meaning of section 252(1) read with 252(3) of the

Companies Act, 2013 as it has to recover taxes payables by company and great prejudice will be caused to revenue if the name of the company is not

restored back.

11. In above circumstances, this appeal deserves to be allowed as the appellant is qualifying as "creditor" under section 252(3) of the

Companies Act, 2013. Hence this appeal is allowed and the Registrar of companies is directed to restore the name of the Company in their Register

and also proceed to take such other and further penal action against the respondents in accordance with the statutory provisions. The name of the

Appellant Company shall then, as a consequence, stand restored to the Register of the Registrar of Companies, as if the name of the company had not

been struck off in accordance with Section 248(1) of the Companies Act, 2013.

12. The appeal is disposed of accordingly.

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