

(2018) 09 NCLT CK 0021

**National Company Law Tribunal New Delhi Bench****Case No:** Appeal No. 651/252/ND Of 2018Ganges Printing Ink Factory  
(Bombay) Ltd.

APPELLANT

Vs

Registrar Of Companies And Anr.

RESPONDENT

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**Date of Decision:** Sept. 19, 2018**Acts Referred:**

- Companies Act, 2013 - Section 252(1), 252(3)
- Companies Act, 1956 - Section 560(5)

**Hon'ble Judges:** Dr. Deepti Mukesh, J**Bench:** Single Bench**Advocate:** SP Singh Chawla, Kusum Yadav, Deepak Anand, Aayushmaan Vatsyayana**Final Decision:** Disposed Of

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**Judgement**

1. This appeal is filed by the company, M/s Ganges Printing Ink Factory (Bombay) Limited (for brevity the "Company"), through and along with its Director, Mr. Manish Kumar Agarwal, under Section 252(1) of the Companies Act, 2013 (for brevity the "Act") against the order of striking off the name of the company passed by the respondent under section 560(5) of the Companies Act 1956 published on 23.06.2007 vide notification no. ROC-DEL/560(5)/SM/260 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 20.12.1972 having CIN U24223DL1972PTC006404.
3. The company is having registered office at R-61, Greater Kailash, New Delhi.

4. Authorized share capital of the Company is Rs.10,00,000/-divided into 10000 equity shares of Rs.10/- each and issued, subscribed and paid up share

capital of the Company is Rs.1,00,030/- divided into 10,030 equity shares of Rs.10/- each.

5. The main objects of the company are:

i. To carry on the business of manufacturers, processors, blenders, formulators, dealers of and exporters and importer of ink, varnishes, paints, glues,

adhesives, laminating and coating material including liquidized metals waxes and any other printing, laminating coating or other protective or decorative

surfacing materials, whether now in existence or as may be developed in future.

And other main objects.

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

incorporation, the name of the company was struck off in terms of provision of Section 560(5) of the Companies Act, 1956.

7. The Appellant has submitted that the company was in operation and the business activities were carried out by the company during the period of

striking off but the reporting of such activities through Annual Returns and Financial Statement had not been filed with Registrar of Companies due to

inadvertence on part of the management and lack of business professional.

8. The appellant have stated that no notice under section 560(5) of the Act was received by the Company or any of the directors or any person on

their behalf before the final notification of striking off the name of the company was published by the ROC.

9. However, without going into the controversy of the latches in following the due procedure of law by Registrar of Companies before the final act of

striking off the name of the company from the register of companies maintained by Registrar of Companies, for non-filing of statutory documents by

company for the relevant period, through publication of notice on 23.06.2007, the appellants have preferred to prove with documents and records that

the company was in operation and doing business during the period of striking off the name of the company as a better remedy.

10. The Appellant has brought forward the following facts about it being in operation and functional during the period of striking off:

- i. The copy of Bank Statement of company issued by Bank of India, from 01.04.2014 to 31.01.2017, reflecting various transactions done by the company during the period of striking off and having closing balance of Rs. 4,66,622/-.
- ii. The copies of financial statements of the company for the financial years from 31.03.2006 to 31.03.2017. The Balance Sheet as on 31.03.2017 reflects fixed assets of Rs. 56,704/- and Profit of Rs. 2,10,499/-.
- iii. The company has incurred employee benefit expense of Rs. 1,08,000/- for the financial year ending on 31.03.2017.
- iv. The copies of Income Tax Returns filed for the assessment years 2013-14 to 2016-17. The tax paid for assessment year 2016-17 is Rs. 2,12,000/-.
- v. The copy of khatoni paper (land paper), dated 01/06/2018 issued by Talathi Saja Hariyali Tahsil Kurla in favour of the appellant company.
- vi. The copy of property tax bill and receipt, for the year 2017-18 in the name of the appellant company.

11. It is further submitted by the Appellants that the failure to file financial statements and annual returns with the Registrar of Companies, NCT of Delhi and Haryana was due to inadvertence on part of the management and due to lack of professional guidance and as such there was no wilful or mala-fide motive behind non-filing of the Financial Statements and Annual returns.

12. The Registrar of Companies has stated that it has no objection if the name of the Company is restored on proving by the Company that it was carrying on business or was in operation and the Company be also directed to file financial statements up to date with appropriate filing and additional fees.

13. The Income Tax Department has submitted in its report that there is no outstanding demand against the Assessee and has no objection if the company is considered for revival.

14. The Section 252(3) contemplates that one of the three conditions are required to be satisfied before exercising jurisdiction to restore company to its original name on the register of the Registrar of Companies namely:

- i. That the company at the time of its name was struck off was carrying on business.
- ii. Or it was in operation

iii. Or it is otherwise just that the name of the company be restored on the register.

15. The Appellant have submitted sufficient evidence that it has been in operation since incorporation and therefore could not be termed as defunct

company. Thus, taking into consideration the provisions of Section 252(3) of the Companies Act, 2013 which vests this Tribunal with a discretion

where the Company whose name has been struck off and such Company is able to demonstrate that there is a running business as on the date when

the name was struck off and also keeping in consideration that it is just to do so can restore the name of the Company in the Register and in the

interest of all stakeholders including the Appellant itself who seeks restoration of the name of the Company in the register maintained by Registrar of

Companies, the company deserved to be restored.

16. Accordingly, this appeal is allowed. The Public Notice of Registrar of Companies striking the name of the company is set aside. The restoration of

the company's name to the Register of Registrar of Companies is ordered subject to its filing of all outstanding documents with proper filing fees

along with additional fees required under law and completion of all formalities, including payment of any late fee or any other charges which are

leviable by the respondent for the late filing of statutory returns, and also subject to payment of cost of Rs. 25,000/- to be paid to Prime Minister's

Relief Fund. 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 560(5) of the Companies Act, 1956.

17. The appeal is disposed of accordingly.

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