(2020) 12 NCLT CK 0076

National Company Law Tribunal New Delhi Bench

Case No: Appeal No. 431/252/ND Of 2019

Srisri Creations Jewels And Handicrafts Pvt. And Ors.		APPELLANT
	Vs	
Registrar Of Companies And Anr.		RESPONDENT

Date of Decision: Dec. 31, 2020

Acts Referred:

- Companies (Removal Of Names Of Companies From The Register Of Companies) Rules, 2016 - Rule 9
- Companies Act, 2013 - Section 248, 248(1), 248(5), 252, 252(3), 455

Hon'ble Judges: Dr. Deepti Mukesh, J; K.K Vohra, Member (Technical)

Bench: Division Bench

Advocate: S.K.Pandey, Easha Kadian, M. Yadubhusha Rao, Ankit Singh

Final Decision: Disposed Of

Judgement

1. This appeal is filed by Srisri Creations Jewels and Handicrafts Pvt. Ltd. by and through its Directors, Shri Devender Rai and Shri Ashwani Kumar,

under Section 252 of the Companies Act, 2013 (for brevity 'the Act') against the order of striking off of the name of the company passed by the

respondent under section 248 (5) of the Act read with Rule 9 of Companies (Removal of Names of Companies from the Register of Companies)

Rules, 2016 published on 08.08.2018 vide public notice no. ROCDEL/248(5)/STK-7/4865 by Registrar of Companies, the respondent herein.

2. The appellant is a private limited company incorporated on 04.08.2005, with the name of Srisri Creations Jewels and Handicrafts Private Limited

under the provision of Companies Act, 1956 bearing CIN U36911DL2005PTC139355. The company is limited by shares and has its registered office

at Unit at 01 & 02, Ground Floor. The authorized share capital of the company is Rs.11,00,000/- divided into 1,10,000 equity shares of Rs. 10/- each

and the issued, subscribed and Paid up capital of the company is Rs. 1,00,000/- divided into 10,000/- equity shares of Rs. 10/- each.

3. The main objects of the company are:

1. ""To carry on the business of manufacturing, trading, import, export of all kind of gold, silver, platinum, diamond, jewellery & ornament.

2. To cut saw, clean, polish, sort drill string and set up lapidary of diamonds, precious and semi-precious stones and to buy, sell, import,

export otherwise deal in rough and polished diamonds, both industrial and gem quality and other precious and semi-precious gems, pearls

and stones.

3. To carry on the business of testing, evaluation, appraisal and certification of gemstones, jewellery, minerals, curios, antiques and other

works of art and to work as certified valuers.

4. A notice no. ROC-DEL/248/STK-5/2018/2912 dated 18.06.2018 was issued by the Registrar of Companies that the company has not been carrying

on any business or operation for a period of two immediately preceding financial years and has not made any application within such period of

obtaining the status of dormant company under Section 455. The name of the company was struck off in terms of provision of Section 248 sub section

5 of the Companies Act, 2013 read with Rule 9 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016

vide notice dated 08.08.2018.

5. The Appellant has submitted the following evidence of it being in operation and the business activities being carried out by the company:

a) The appellant company has filed its income tax returns for the assessment year 2016-17, 2017-18 and 2018-19 which reflects Rs 2,85,230/-,Rs.

2130 and nil respectively to be claimed as refunds.

b) The copy of Bank Statement of the Account maintained with Axis bank for the period of 01.04.2015 to 17.02.2019 has been annexed, which

reflects various transactions and a closing balance of Rs.6595.78/-.

c) The VAT returns has been filed for the First quarter-2016, Second Quarter -2017 and Third quarter of 2017 wherein a total turnover of

Rs.1,29,49,285; 43,59,208 and Rs. 81,15,050 has been recorded respectively.

6. The public notice was published by the ROC-Delhi, at the website of Ministry of Corporate Affairs, wherein the name of the Appellant Company

was mentioned. The ROC proposed to remove/strike off the name of the appellant company unless a cause has been shown to the contrary within 30

days from the said Public notices.

7. The appellanthas stated that no notice under section 248(5) of the Act in the form of STK-7 was served through physical mode to the Company or

any of the directors of the company on their behalf and was not afforded any opportunity of being heard before striking off of the name of the

company. The appellant also had no knowledge of the same. Hence failed to make representation to the ROC- Delhi and could not file necessary

documents within the stipulated period of time.

8. The appellant company has admitted that there has been default for the non- filing of financial statements with the registrar of the companies due to

the lack of proper professional guidance, oversight, inadvertent reason and without any malafide reasons, consequently, due to non-filing of such

Financial statements and Annual Returns, name of the Appellant Company was struck off by the Registrar of the Companies, NCT of Delhi &

Haryana from its Register of Companies pursuant to provisions of Section 248 of the companies Act.

9. However, without going into the controversy of the lapses, 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, 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 of the name of the company as a better remedy.

10. It is further submitted by the Appellant that if the name of company is restored the company shall be able to continue the work and shall file all

outstanding statutory documents and returns i.e. financial statement and annual returns along with filing fee. Also, it is manifestly established the

Appellant Company is defunct or non-operational or dormant company within the meaning of Section 248 of the Companies Act, 2013.

11 .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.

12. The Income Tax Department has filed their report. The appellant company has duly filed income tax return for the financial years 2016-17, 2017-

18 and 2018-19 which has been annexed. However, a liability of Rs. 39,70,208 for Assessment Year 2015-16 is ending which the appellant undertakes

to deposit.

13. 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.

14. The Appellant have submitted sufficient evidence that it has been in operation during the period of striking off 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.

15. Accordingly, this appeal is allowed. The Public Notice of Registrar of Companies striking off 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 248(1) of the Companies Act, 2013.

16. The appeal is allowed and disposed off accordingly.

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