

(2024) 02 NCLT CK 0029

National Company Law Tribunal, Kolkata Bench

Case No: Company Petition No. 274/Kb/2023

Sonar Bangla Communication

Private Limited

APPELLANT

Vs

Income Tax Officer

RESPONDENT

Date of Decision: Feb. 7, 2024

Acts Referred:

- Companies Act, 2013 - Section 248(1), 252(1)
- Income Tax Act, 1961 - Section 143(3), 144, 147, 153A, 153C, 156

Hon'ble Judges: Bidisha Banerjee, Member (J); D. Arvind, Member (T)

Bench: Division Bench

Advocate: M.K.Baruwa

Final Decision: Disposed Of

Judgement

D. Arvind Member (Technical)

1. This is an appeal preferred by Income Tax Officer, Ward 11 (1), Kolkata under Section 252 (1) of the Companies Act, 2013 for restoration of the name of the company viz. Sonar Bangla Communication Private Limited in the register of Registrar of Companies, West Bengal. The name of the Respondent Company had been struck off on 09.06.2017.
2. Court Notice was issued to the respondent and to the company. Affidavit of service proving service of notice is filed. We are satisfied with proper delivery of notice. However, there is no representation by any of the directors of the struck off company.
3. The appellant contends that the name of the Respondent company had been struck off by the ROC, W.B., in compliance of the provisions under Section 248 (1) of the

Companies Act, 2013 thereby the name of the respondent company had been removed from the Register of Companies and the said company was dissolved.

4. The appellant further contends that the proceedings under the Income Tax Act, 1961 are pending for Assessment Year 2013-14, 2016-2017 against the Company and during the pendency of proceedings, the name of the respondent company had been struck off. Aggrieved by the order of striking off the name of the company, this application was filed by the Income Tax Officer praying for restoration of the respondent company to the register of Registrar of Companies and further to rectify the Master Data by modifying the status from 'struck off' to 'active'.

5. It is submitted that the respondent company has not paid Income tax dues for the Assessment Year 2013-14, 2016-2017 and the recovery proceedings are pending against the respondent company and that the respondent company has committed serious violation of provisions of Income Tax Act rendering the entity liable to consequences as per the Income Tax Act. The restoration of the Company to take the pending proceedings to a logical conclusion.

6. It is submitted that as per paragraph 2 of CBDT letter F. No. 225/423/2017-ITA.II dated 29.12.2017, appeal for restoration of name of the struck off company shall be made by the Income tax Department if,

(i) The proceedings under Section 143 (3)/144/147/153A/153C set aside cases were already in progress/pending or;

(ii) Contemplated in future against the Company;

(iii) Departmental appeals initiated were pending;

(iv) Penalty proceedings already initiated were pending;

(v) Prosecution proceedings were initiated launched;

7. Notices were issued to the Respondents. ROC, WB has filed his report submitting that it has no objection to the application being allowed.

8. Upon hearing the arguments of the Appellant, we are satisfied that the name of the respondent company is required to be restored to the Register of Companies since proceedings under Sections 147 and 156 of the Income Tax Act, 1961 are pending for Assessment Year 2013-14, 2016-2017 against the Company. In these circumstances, if name of the company is not restored it would cause great prejudice to the appellant and loss to the Revenue to the exchequer.

9. In the result, the appeal is allowed by restoring the name of the company in the register of Registrar of Companies, West Bengal with a direction to modify the status of

the company from "struck off" to "active" within 30 days from the date of receipt of this order.

10. This Company Petition No. 274/KB/2023 is allowed and disposed of.

11. There will be no order as to costs.

12. Urgent certified order, if applied for, be supplied to the parties upon compliance of all requisite formalities.