

(2024) 03 NCLT CK 0031

National Company Law Tribunal, Chandigarh Bench

Case No: Company Petition No. 20/Chd/Hry/2022

Narang Spaces Private Limited

APPELLANT

Vs

Registrar of Companies, NCT of
Delhi and Haryana

RESPONDENT

Date of Decision: March 14, 2024

Acts Referred:

- Companies Act, 2013 - Section 248(1)(c), 248(5), 252(3), 455
- National Company Law Tribunal Rules, 2016 - Rule 87A
- Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 - Rule 9

Hon'ble Judges: Dr. P.S.N Prasad, Member (J); Umesh Kumar Shukla, Member (T)

Bench: Division Bench

Advocate: Manish K. Singh, Gauri Neo Nagpal

Final Decision: Dismissed

Judgement

Dr. P.S.N Prasad, Member (Judicial);

Umesh Kumar Shukla, Member (Technical)

1. This Company appeal has been filed by the company through Mr. Balvinder Singh Narang residing at 64, South Anar Kali, Near Som Bazar, Preet Vihar, Delhi-110051, who is its Director (DIN No. 03527016) and shareholder holding 20% of its share capital, under Section 252(3) of the Companies Act, 2013 read with Rule 87A of National Company Law Tribunal Rules, 2016 against the order of Registrar of Companies, NCT of Delhi and Haryana (hereinafter referred to as 'RoC') dated 27.04.2017 for striking off the name of the Narang Spaces Private Limited (hereinafter referred to as 'Company') having registered office at B-1/63, Sector 11, DLF Faridabad-121006 (CIN No.

U70109HR2011PTC043105) from the Register of Companies, maintained in the Office of the RoC.

2. As the registered office of the company is in Faridabad, Haryana, this appeal is within the territorial jurisdiction of this Tribunal.

FACTS OF THE CASE

3. The facts, as submitted in the appeal, have been summarised below:

(i) The respondent vide letter No. ROC-DEL/248/STK-5/721 dated 27/04/2017 has struck off the name of the company from its register and declared the appellant company as dissolved. The name of the company is mentioned at serial no. 15410 of the said letter, which is annexed as Annexure A-1 to the appeal. It is also submitted that the appellant Company neither received any show cause notice, nor was it afforded any opportunity of being heard, before the aforesaid action for striking off its name was taken by the respondent. The fact of the strike off of the Company came to the knowledge of the management of the Company, while surfing the official website of the Ministry of Corporate Affairs.

(ii) Authorized Share capital is Rs.10,00,000/- (Rupees ten lakh only) divided into 1,00,000 (one lakh only) equity shares of Rs.10/- (Rupees Ten Only) each. The issued, subscribed and paid-up capital of the company is Rs.4,00,000 (Rupees Four Lakh Only) divided into 40,000 (Forty Thousand Only) equity shares of Rs.10/- (Rupees Ten Only) each. The appellant has also furnished the list of shareholders as on 31.03.2021, according to which there are three shareholders as below:

S.N.	Shareholder's Name	No.of Shares held	% of Shares
1	Balvinder Singh Narang	8,000	20%
2	Mandeep Singh Narang	16,000	40%
3	Manpreet Narang	16,000	40%
	Total	40,000	100%

Although, Balvinder Singh Narang, one of the shareholder, has filed the petition, it is not stated in the petition, whether other two shareholders (i.e. Manpreet Narang & legal heirs of late Mandeep Singh Narang are aware of the appeal and have consented to the pleadings made in the petition.

(iii) The appellant has also furnished the list of directors as on 31.03.2021, according to which there are two directors of the appellant company namely, Mr. Balvinder Singh Narang and Late Mr. Mandeep Singh Narang (Demise date on 06.02.2017).

(iv) Since its incorporation the Company is active and running its business. The Company has prepared all the records pertaining to its business activities such as Balance Sheet, Profit and Loss account and other statutory and non-statutory documents. The company has been regular in filing of its annual financial statement and other relevant returns with the respondent. Despite the best synergies and efforts, the Company could not file its annual return and financial statements (Income Tax Returns) for the financial years 2012-13, 2013-14, 2014-15, 2015-16, 2016-17, 2017-18, 2018-19, and 2019-20 within the stipulated period of time. A copy of the Bank Account Statement and Annual Financial Statement has been stated to be attached at Annexure-5 of the petition, but the same have not been found to be attached as Annexure-5 (Annexure-5 is list of shareholders and directors of the company as on 31.03.2021) or elsewhere in the petition.

(v) It is a lawful owner of the residential free hold flat, House no. 73, 2nd Floor, Block-B, Sector 12, Ramprastha, District Ghaziabad admeasuring area of 174.14 sq. mtr. vide a sale deed bearing Book No. 28418 dated 31st October, 2008.

4. This Tribunal in its hearing held on 22.03.2022 has directed to issue the notice of the petition to the RoC and the Income Tax Department. The Affidavit of service was filed by the appellant, vide diary No. 01480/01 dated 13.04.2022.

REPORT OF INCOME TAX DEPARTMENT

5. It has been stated by the counsel for the Income Tax Department that there is an outstanding demand of Rs.13,65,370/-, however there is no report of the Income Tax Department available on the record of this Tribunal despite service of the appeal.

REPORT OF THE ROC

6. The RoC has submitted its report vide diary no. 01480/4 dated 07.09.2022. It is submitted in the said report that:

(i) The company was incorporated on 03.06.2011 and company has not submitted any documents to the RoC since incorporation, before it was considered to be struck off. Moreover, no subsequent documents had been filed by the company with this office to obtain the status of a "Dormant Company" under Section 455 of the Companies Act, 2013. Hence, there was reasonable cause to believe that the company was not in operation, and therefore, the name of the company was considered for striking off from the Register of Companies.

(ii) The RoC office also issued the notice in the form STK-1 in the month of March, 2017 intimating the company and the directors of the company about the aforesaid defaults, providing them a fair opportunity to respond. Subsequently, it also issued public notice for the same in the form STK-5 dated 28.04.2017 and public notice published in Hindustan Times newspaper on 27.04.2017 (Annexure-II of the report). Thereafter, the name of the company was struck off as per the provision of Section 248(1)(c) 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 in the form of STK-7 dated 07.06.2017.

(iii) The action of striking off of the present Company was legal and justified, as the company was not carrying on any operations for a period of two immediately preceding financial years (as indicated by non-filing of the financial statements of the Company for two or more years).

(iv) The company has not attached any financial statements, bank statement, income tax return and other supporting documents, which further fails to support the claim of the company that it was carrying on any business at the time of strike off.

7. It has been submitted in the RoC report that the appellant may be directed to prove that at the time of striking off, it was carrying on business or was in operation and if this Tribunal considers the application for restoration of the appellant company, it may also issue directions to file all the pending Annual Returns and Balance Sheets with the RoC within such time as directed and award costs in favour of the Respondents (RoC), as the company deliberately failed to file its statutory returns with the respondent under the Companies Act, 2013.

8. The Appellant company had been directed to file an affidavit to the effect that it was carrying on business or was in operation at the time of striking off. The appellant company filed an affidavit vide diary no. 01480/5 dated 08.02.2023, wherein it is stated that **"...the tax liability of Rs.13,65,370/- (Rupees Thirteen Lac Sixty-Five Thousand Three Hundred and Seventy Only) shall be realized by my Company, as soon the name of the Company is restored in the Register of the Companies maintained with the Registrar of Companies, NCT of Delhi and Haryana and the bank account of the Company becomes operational/ opened/ activated."** The aforesaid affidavit fails to state that the appellant company was carrying on business or was in operation at the time of striking off, despite there being specific directions in that regard by the Tribunal.

ANALYSIS AND FINDING

9. We have heard the submissions of the Ld. Counsel of the appellant, Ld. Senior Standing counsel for the Income Tax Department and the Ld. ARoC, and also perused

the paper book of the case file.

10. As per provisions of sub-section 3 of Section 252 of the Companies Act, 2013, **a company, or any member or creditor or workman thereof feeling aggrieved by the company having its name struck off from the register of companies may file an appeal for restoration of name of the company before the expiry of twenty years from the publication in the Official Gazette of the notice under sub-section (5) of section 248.**

11. As per the Annexure IV of the RoC report, the date of publication in the Official Gazette of the notice under sub-section (5) of section 248 is 30.06.2017. The appeal for restoration of name under section 252(3) can be filed within 20 years from 30.06.2017. As the appeal has been filed vide diary no 01480 dated 23.02.2023. The appeal is within the period of limitation.

12. It is noted that the application has been filed by Mr. Balvinder Singh Narang, Director/ shareholder of company based on the Board Resolution passed at the Meeting of Board Directors held on 01.11.2021 authorising him to file the petition. The Board Resolution has no significance, as the name of the company has been stricken off.

13. It is noted from the RoC report that the name of the company was struck off as per the provisions of section 248(1)(c) of the Companies Act, 2013, which provides for initiate action for striking off the name of a company, if it is not carrying on any business or operation for a period of two immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant company under section 455. The RoC in its report has submitted that appellant may be directed to show that at the time of striking off, the appellant company was carrying on business or was in operation. As the notice in the form of STK-1 was issued in the month of March, 2017, public notice for the same in the form of STK-5 was issued on 27/28.04.2017, and the date of publication in the Official Gazette of the notice under sub-section (5) of section 248 is 30.06.2017, the documents submitted by the appellant have been examined to understand, whether the company was carrying on the business during the period March-June, 2017.

14. It is also noted that the appellant has neither submitted any document to support that it was carrying on business at the time of striking off its name by RoC nor has furnished the same in spite of specific direction in that regard. It is also noted that company was incorporated in 2011 and has not filed the balance sheets, annual returns and income tax returns since its inception. Therefore, Appellant Company has failed to bring the relevant information on record, which could depict that the Appellant Company was carrying on business or was in operation at the time, when its name was struck off from the register of RoC.

15. The provisions of sub-section 3 of Section 252 of the Companies Act, 2013, provides that **the Tribunal, 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.**

16. In the present case, it is worthwhile to refer to the Judgement of Hon'ble NCLAT in the matter of Alliance Commodities Private Limited Company Appeal (AT) No. 20 of 2019, which has been reproduced below:

"Section 252 (3) of the Companies Act, 2013 empowers the Tribunal to order restoration of a Company whose name has been struck off from the Register of Companies, if such company, any member or creditor or workman thereof feeling aggrieved by such striking off applies before the Tribunal seeking restoration of the struck off company to the Register of Companies before the expiry of twenty years from the publication in Official Gazette of notice under Section 248(5). The exercise of such power is properly regulated and depends upon satisfaction of the Tribunal that the Company at the time of its name being struck off was carrying on business or in operation or otherwise it is just that the name of company be restored."

17. After careful examination of the facts and circumstances of this case, we are of considered view that neither the company has been able to establish that it was carrying on business or in operation nor otherwise it is just that the name of the company be restored.

18. In view of the above, the Appellant has failed to establish a case for restoration of the name of the company. The Appeal stands dismissed without costs.

19. Let the copy of the Order be made available to the Parties.