

(2024) 03 NCLT CK 0047**National Company Law Tribunal, Mumbai Bench Court V****Case No:** C.A No.126/252/MB/2023Dinesh Jain Developer Company
Privatelimited

APPELLANT

Vs

Registrar of Companies Mumbai

RESPONDENT

Date of Decision: March 14, 2024**Acts Referred:**

- Companies Act, 2013 - Section 252(3), 455

Hon'ble Judges: Reeta Kohli, Member (J); Madhu Sinha, Member (T)**Bench:** Division Bench**Advocate:** Saurabh Pandya**Final Decision:** Disposed Of

Judgement

1. The present Petition has been filed under Section 252(3) of the Companies Act, 2013 (hereinafter as to Act) by "Dinesh Jain Developer Company Pvt. Ltd." having share capital of the Company is Rs.5,00,000 divided into 50,000 equity shares of Rs. 10/- each and the issued subscribed and paid up capital of the Company is Rs.2,00,000/- divided into 20,000/- number of equity shares of Rs. 10/- each, seeking restoration of the name of the company in the Register of Companies maintained by the Registrar of Companies, Mumbai.

2. The name of the Company was struck off from the Register of companies on account of reason that the Company has failed to file of its statutory returns for a continuous period of more than five years and have not made any application within such period for obtaining the status of Dormant Company under Section 455 of the Act. The ROC published a public notice for striking off and dissolution of Company i.e. STK-5 dated 02.05.2017 & STK-7 dated 10.07.2017.

Submissions from the Petitioner:

3. It is submitted that the company was incorporated on 07.06.2010 under the Companies Act, 2013. The Company was registered with the Registrar of Mumbai, having CIN U45400MH2010PTC203798. The name of the Company was struck off from the Register of companies because the Company failed to file of its statutory returns for a continuous period of more than five years.
4. It is submitted that the ROC, Mumbai has first published the notification bearing STK-5 bearing no./ROC/STK/2/dated 02.05.2017 and then STK 7 bearing No. ROC/MUM/Sec 248/2017 STK-7/2 dated 10.07.2017. The Respondent initiated the proceedings and struck off the Petitioner Company name from the Registrar without giving it any opportunity of being heard.
5. The Petitioner further submits that the, financial Statements were fully prepared and signed with the intention to file with the ROC, Mumbai but the Petitioner Company could not file its financial statements due to inadvertence on the Part of the Employee/apprentice if the Chartered Accountant of the Petitioner Company.
6. Further it is submitted that the Petitioner Company has been regular in filing the Income Tax Returns for the Assessment years 2011-2012, 2012-2013, 2013-2014, 2014-2015, 2015-2016, and 2017-2018. The Annual General Meeting was duly convened from time to time. However due to lack of Professional guidance on the part of the Petitioner Company's Chartered Accountant, the Petitioner Company convened the Annual General Meeting for the defaulting years, but could not updated it on official website of MCA due to non-filing of returns.
7. It is further submitted that, the Company had purchased a land purchased a land in its own name. The Director of the Petitioner Company has invested an amount of Rs1,75,00,000/- to purchase land. The Petitioner Company had active bank account in Saraswat Co- Operative Bank Limited, Carnac Bumder Branch, bearing Account no. 43100100000245. However, account has been frozen due to the striking off the name of Company.
8. It is further submitted that, the Company is ready to comply with the relevant provision of Companies Act,1956 read with Companies Act 2013, Further the Company is willing to file the necessary Documents and pending Annual Reports in compliance with the provisions of the Companies Act,2013 before the ROC Mumbai.

Submissions from the Respondent/RoC:

9. The Respondent/ ROC has filed a detailed report with this Tribunal explaining the sequence of events leading to the striking off of the company. It is stated that the petitioner failed in filing its statutory returns for a continues period of more than five

years to the Registrar of Companies, Mumbai. The Respondent issued notices in forms STK-1 to Company and its director informing the intention of Registrar to strike off the name of Company and STK-5 dated 02.05.2017 was published in Official Gazette and in leading English Newspaper (Times of India) and a vernacular language newspaper (Maharashtra Times Marathi) seeking objections the proposed striking off the name of the Company from the records of Registrar of Companies on the ground that the Company had failed to file Annual Return and Financial Statements of the Company.

10. The Respondent has further submitted that in absence of any representation against the proposed strike off action, the Registrar struck off the name of the company on 23.06.2017 and the dissolution order was published on the website of the Ministry vide STK 7 on 10.07.2017.

Findings:

11. The facts and circumstances of the case show that the relevant documents which are required to be filed, are ready with the Company and the Company is willing to file the same, if so permitted.

12. The Petitioner has enclosed the Audited Annual Accounts for the years 2011-2012, 2012-2013, 2013-2014, 2014-2015, 2015-2016, 2016-2017, 2017-2018, 2018-2019, 2019-2020, 2020-2021 & 2021-2022 with the Petition to demonstrate that the Company is in continuous operation.

13. Hence, upon considering the facts and circumstances of this present appeal, this Bench observes that, the appeal has been filed after a period of 12 years by the Director of the M/s. Dinesh Jain Developer Company Private Limited before the Tribunal as per the provision of 252(3) of the Companies Act 2013. This Bench is therefore of the view that, it would be just and proper to order restoration of the name of the Company in the Register of Companies maintained by the ROC Mumbai.

ORDER

14. Accordingly, this Appeal is allowed. The restoration of the Company's name in the Register of Companies maintained by the ROC Mumbai, is hereby ordered, **subject to payment of cost of Rs. 25,000/- per Financial year for Non-Compliance, i.e. from the year 2011 to 2023 totaling amount of Rs.3,00,000 Lakhs** in the account of "Bharat Kosh". The appellant Company shall undertake to abide by the Provisions of the Companies Act, 2013. Consequentially thereupon the Bank Account/s if frozen on amount of non-compliance, shall get defreeze and be eligible to be operated by the Company.

15. The Registrar of Companies, Mumbai shall give effect of this Order only after perusal of the Compliance report in respect of the costs imposed. The Company is

directed to file all the required documents and fulfil other relevant statutory compliances within 30 days from restoration of its name in the Register of Companies maintained by the ROC.

16. A copy of this order to be sent to Registrar of Companies, Mumbai for Compliance.