

(2024) 03 NCLT CK 0056**National Company Law Tribunal, New Delhi Court V****Case No:** Company Appeal No. 41/Nd/2023

Deepti Gupta

APPELLANT

Vs

Registrar of Companies

RESPONDENT

Date of Decision: March 22, 2024**Acts Referred:**

- Companies Act, 2013 - Section 248(1), 248(5), 252(3), 455

Hon'ble Judges: Mahendra Khandelwal, Member (J); Dr. Sanjeev Ranjan, Member (T)**Bench:** Division Bench**Advocate:** RS Bhatia, Shankari Mishra**Final Decision:** Disposed Of

Judgement

Mahendra Khandelwal, Member (Judicial)

1. The present appeal has been filed by Appellant, Ms. Deepti Gupta, stating to be a Shareholder of the Company under Section 252(3) of the Companies Act, 2013 for restoration of name of the company, which was struck off by the Registrar of Companies, NCT of Delhi and Haryana (Respondent) vide Public Notice ROC-DEL/248/STK-5/2018/2912 dated 18.06.2018.

FACTS

2. That the Company was incorporated on 13.06.2006 as a private limited company and was registered with the Registrar of Companies, NCT of Delhi (RoC) vide Registration No. 149691 and the Certificate of Incorporation bearing CIN: U70109DL2006PTC149691 was issued to the Company.

3. That since its incorporation, the Company is continuously operative and is maintaining current account bearing Current Account No. 11050200035097 with

Federal Bank, Connaught Circus, New Delhi which continued to be operational till the date of the Company being struck off from the Register of companies.

4. This Tribunal vide order dated 12.01.2024 had directed the Appellants to explain by affidavit whether 'Mr. Deepti Gupta, the Appellant and Mr. Abhishek Aggarwal were the shareholders of the Company i.e., M/s Rishyab Infratech Pvt. Ltd. At the time it was struck down by the RoC.' In compliance of the same, an affidavit of Ms. Deepti Gupta has been filed wherein it has been stated that she and Mr. Abhishek Aggarwal were the shareholders of the Company at the time company was struck down by the RoC in 2018. To Substantiate the same, a copy of Balance sheet along with Auditor's Report for the FY ending 31.03.2018 has been attached wherein it is mentioned that both were having 50% shareholding each. They are members of the Company and as per Section 252(3) of the Companies Act, 2013, can file present appeal/application.

5. That the Company had not filed any Annual Returns and Audited Balance Sheets, Statement of Profit and Loss Account with report of Auditors' and Directors' thereon since financial year ended 31.03.2015.

6. That pursuant to such failure, the RoC issued a notice ROC-DEL/248/STK-5/2018/2912 dated 18.06.2018 in STK-5 to strike off the name of the Company. Further, vide Notice No. ROC-DEL/248(5)/STK-7/4865 in Form STK-7 dated 08.08.2018, the name of the Company was struck off from the Register of Companies.

7. That the Appellant asserted that the company have pending writ petition bearing No. 8215/2013 titled, "M/s Rishyab Infratech Pvt. Ltd. V. Lt. Governor, NCT of Delhi & Others" before the Hon'ble Delhi High Court wherein the company have claimed compensation of Rs. 5 Cr. (Approx.) against an award of Land Acquisition Collector. The Company is planning to expand its operations and the order of striking off of the company will be prejudicial to the efficient operations of the Company.

8. That the present Appeal is for Restoration of the name of the Company in the Register of Companies maintained by the Registrar of Companies, NCT of Delhi & Haryana.

9. This Tribunal vide order dated 14.06.2023 directed to appellant to issue notice to the Respondent and Income Tax Department. Pursuant to notice, Registrar of Companies, NCT of Delhi and Haryana (Respondent) had appeared and filed its reply dated 05.09.2023 and further submitted that they have no objection on revival subject to filing of necessary returns and reports. No one appeared on behalf of Income Tax Department.

10. The Appellant also asserted that the Balance sheets and Annual Returns were prepared and audited but could not be filed due to Lack of co-ordination with professionals, Director's unawareness of legal filings and pending litigation before

Delhi High Court.

CONTENTIONS OF RESPONDENT (RoC)

10 The Registrar of Companies (ROC) in its reply dated 05.09.2023 submits that the appellant company was incorporated on 13.06.2006 and there is no data or record which can be taken into consideration pertaining to the Annual Return and Balance Sheet filed by the appellant company to the office of RoC pursuant to 31.03.2014, which was the criterion for the appellant company to be struck off by the RoC. Moreover, no subsequent documents had been filed by the Appellant Company to obtain the status of the Dormant Company under Section 455 of the Companies Act, 2013.

11 Further, Registrar of Companies (ROC) submits that 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.

ANALYSIS/CONCLUSION

12 Heard the Ld. Counsel for the Appellant as well as Ld. Counsel for RoC. Record has been thoroughly perused. We observe that the Appellant Company in order to sustain his case, has placed reliance on the following documents: -

- a) Justification for filing Writ Petition bearing No. 8215/2013 with Hon'ble Delhi High Court dated 21.09.2022.
- b) Copy of the statement of Bank Accounts of the Company.
- c) Copies of the provisional Balance Sheets for FY 2016-17 to 2019-20 and Income Tax Returns of the Company for F.Y 2015-21.
- d) Affidavit by Director to undertake compliances.
- e) Tentative Business Development Plan for the next five years with financial projects.

13 On the perusal of the documents on record, it is observed that the Company was operative and carrying on its business operations effectively in the previous financial years and hence, could not be said to be a dormant company under Section 455 of the Companies Act, 2013.

14 At this juncture, it will be advantageous to examine the requirement of Section 252(3) of the Companies Act, 2013 insofar as grant of relief to the appellant is concerned. The Section 252 (3) of the Act is reproduced below for better appreciation:

“252. Appeal to Tribunal. –

(1)

(2)

(3) If a company, or any member or creditor or workmen thereof feels aggrieved by the company having its name struck off from the register of companies, the Tribunal on an application made by the company, member, creditor or workmen before the expiry of twenty years from the publication in the Official Gazette of the notice under subsection (5) of section 248 may, 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, and the Tribunal may, by the order, give such other directions and make such provisions as deemed just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off from the register of companies."

15 In connection with the non-filing of statutory records, it is pertinent to refer to the findings of Hon'ble High Court of Delhi in the matter of Mace Platronics Pvt Ltd Vs ROC, reported in (2010) 104 SCL 277 (Del), wherein it was held that:

"When the name of the company was struck off after following the prescribed procedure for non-filing of statutory records, even though the contentions of the company that the officials entrusted with responsibility of filing documents had failed to do so cannot be accepted yet since the company was a running company and the application had been filed in time, the court had power to restore the name of the company."

16 Hence, upon considering the facts and circumstances of this present petition, it would be "just and proper" to order restoration of the name of the Company in the Register of Companies maintained by the ROC.

17 Accordingly, this Petition is allowed. The restoration of the Company's name to the Register of Companies maintained by the ROC, is hereby ordered, subject to the following directions namely-

a) The restoration of the Company's name i.e. M/s Rishyab Infratech Pvt. Ltd. is subject to the payment of cost of Rs. 50,000/- (Rupees Fifty Thousand Only) to be paid to the Registrar of Companies, NCT of Delhi and Haryana. 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 has not been struck off in accordance with Section 248(1) of the Companies Act, 2013.

b) The Registrar of Companies, NCT of Delhi & Haryana (Respondent) is directed to restore the original status of the Appellant company as if the name of the company has not been struck off from the Registrar of Companies with resultant and consequential

actions like changing status of the company from 'struck off' to "Active".

c) The Appellant Company is directed to file all pending statutory document(s) including Annual Accounts and Annual Returns in default along with prescribed fee/additional fee/fine as prescribed under the Companies Act, 2013 within 45 days from the date on which its name is restored on the Register of Companies by the ROC, NCT of Delhi and Haryana (Respondent). Consequently, thereupon the bank account/s if any subject to freeze shall get de-frozen and to be operated by the company.

d) The Appellant company is directed to submit a certified copy of this order to ROC, NCT of Delhi and Haryana within thirty days (30) of the receipt of this order.

e) This order is confined to the violations, which ultimately leads to the impugned action of striking of the name of the Appellant Company, and it will not come in the way of Respondent to take appropriate action(s) in accordance with law, for any other violations/offences, if any, committed by the Appellant company prior or during the striking off of the Appellant Company.

f) Resultantly, the present appeal i.e. Company Appeal No. 41/252/ND/2023 stands allowed with aforesaid terms.

Let the copy of the order be served to the parties. File be consigned to records.