

SSB Infradevelopers Private Limited @APPELLANT @Registrar of Companies

Court: National Company Law Tribunal, New Delhi Bench

Date of Decision: Jan. 21, 2025

Acts Referred: Companies Act 2013 " Section 252, 455, 248

Hon'ble Judges: Sanjeev Ranjan, Member (T); Mahendra Khandelwal, Member (J)

Bench: Division Bench

Advocate: Anang Shandilya ,Niti Khanna

Final Decision: Allowed

Judgement

PER: MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)

1. The present appeal has been filed by Appellant 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(5)/STK-

7/4865 dated 08.08.2018.

2. Brief facts of the case, as mentioned in the instant company appeal, which are relevant to the issue in question, are as follows: -

a) The Appellant Company was incorporated on 22.11.2011 as a private limited company having CIN: U70200DL2011PTC225422 and has its

registered office at 15 (Basement) Rishabh Vihar Delhi-110092. The Authorised Share Capital of the Company is Rs. 1,00,000 divided into

10,000 number of equity shares of Rs. 10/- each. The Present Issued, Subscribed & Paid Up Capital of the Company is Rs. 1,00,000 divided

into 10,000 number of equity shares of Rs. 10/- each.

b) In the year January 2012 a land Approx. measuring 12650 Square meters, Khasra No. 938 (5 Bighas) was Purchased by the Appellant

Company for a total value of Rs. 3,15,00,000.00 (Rupees Three Crore Fifteen Lakhs only) including stamp paper value. That the immovable

property of the Appellant Company has market value of around Rs. 8 Crores.

c) That the Appellant are filing an appeal under Section 252(1) of the Companies Act, 2013 against the order passed by the Respondent

deleting the name of the Appellant Company in exercise of its Powers under Section 248 (5) of the Companies Act, 2013. That the Appellant

Company was carrying on its business/operations at the time of making the above mentioned order by the Respondent but the company has

immovable property of value around Rs. 3.15 Crores which is evident from the annual accounts.

d) The appellant(s) were not aware of any notice served by the Respondent under Section 248 (1) of the Companies Act, 2013 at the address

registered with the Respondent, and therefore, they were unable to take immediate/necessary action in this regard. The Appellant Company

has been in operation till date, but due to unavoidable circumstances and market condition, the Appellant Company is no longer in existence

and its name stands deleted in the records of the Respondent.

3. This Tribunal vide order dated 06.03.2024 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 30.12.2024 to the instant appeal.

4. The Registrar of Companies (ROC) in its reply dated 30.12.2024 submits that there are no records available on the MCA 21 portal regarding the

last Annual Return and Balance Sheet submitted by the company to this office, before it was struck off. Moreover, no subsequent documents have

been filed by the Appellant Company to obtain the status of the Dormant Company under Section 455 of the Companies Act, 2013. 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.

5. However, Ld. Counsel on behalf of the ROC submitted before this Tribunal, that subject to filing of necessary report etc., they have no specific

objection if the company's name is restored, as recorded in order dated 08.01.2025.

6. The Income Tax Department is set as ex-parte vide order dated 20.11.2024.

7. Further, vide order dated 20.11.2024, this Tribunal directed the Appellant to file 5 years' Business Plan if the company is revived. Therefore, in

compliance of order dated 20.11.2024, the Appellant Company has filed affidavit dated 30.12.2024, indicating their 5-year business plan.

8. 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) Copy of Certified true copy of the Annual Accounts duly audited by the Statutory Auditors of the Appellant Company for the financial year

ended on 31st March, 2021 to 31st March, 2023.

b) Copies of the Property documents in the name of the Company

c) Affidavit dated 30.12.2024 indicating 5-year Business Plan of the Company.

9. 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) 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,

(2) If a company, or any member or creditor or workmen thereof feels aggrieved by the company having its name struck off from the

(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.”

10. 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.”

11. 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.

12. 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 Appellant Company's name i.e. SSB Infradevelopers Private Limited 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. 10/252/ND/2024 stands allowed with aforesaid terms.

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

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