

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH COURT-III
(SPECIAL BENCH)

COMPANY APPEAL NO. 65/252/ND/2023

An application under section 252(1) of the Companies Act, 2013.

IN THE MATTER OF:

1. M/s. GENEROUS MERCANTILE PRIVATE LIMITED

H. No 25, First Floor,
Arihant Nagar, West Punjabi Bagh,
New Delhi-110026

.... Appellant

2. M/s. SPECTACULAR MEDIA MARKETING PRIVATE LIMITED

403, Parbhat Kiran,
17, Rajendra Place,
New Delhi-110008

.... Struck off Company

VERSUS

1. THE REGISTRAR OF COMPANIES

NCT of Delhi and Haryana
IFCI Tower, 4th Floor, 61, Nehru Place,
New Delhi-110019

... Respondent

Order pronounced on: 23.07.2024

CORAM:

SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)
SHRI RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

APPEARANCES

For the Appellant: Mr. Mohd Nazim Khan Adv.

For the IT Dept.: Mr. Prashant Meharchandani, SSC, Mr Akshat Singh, JSC,
Mr Utkarsh Kandpal, Adv.

ORDER

PER: RAHUL BHATNAGAR, MEMBER (TECHNICAL)

1. The present Petition has been filed by the Appellant namely M/s. Generous Mercantile Private Limited under Section 252(1) of the Companies Act, 2013 for restoration of name of the struck off company M/s. Spectacular Marketing Private Limited in the register of companies, maintained in the office of the Registrar of Companies, NCT of Delhi and Haryana. It is stated that the struck off company i.e. 'M/s. Spectacular Media Marketing Private Limited was incorporated on 08.09.2010 and the name of the Company was struck off via notice no.- ROC-DEL/248(5)/STK-7/2341 on 20.04.2022 by the ROC.
2. It is contended that the reason given by RoC for striking the name of the company is that the Company has not been carrying on any business or operation for two immediately preceding financial years and has not made any application within such period for obtaining the status of dormant company u/s 455 of Companies Act.
3. The Struck off Company's business is "To carry on the business of media representatives, event holding and management, concessioners and advertising agents, and for that purpose to purchase, sell, hire, book, manage, undertake, hold, provide and promote advertising time or space on any television or radio channel in India, etc". The Authorized Capital of the company was Rs. 1,000,000/-. The Paid-up Capital of the company was Rs. 100,000/-.
4. It is submitted that the Corporate Insolvency Resolution Process of M/s. Spectacular Media Marketing Private Limited (Corporate Debtor) was initiated by the order of the National Company Law Tribunal, Bench VI, New Delhi and Mohd Nazim Khan was appointed as the IRP. Liquidation of the Corporate Debtor was initiated by the order of National Company Law Tribunal, Bench-III, New Delhi and Mohd Nazim Khan was appointed as the Liquidator. The notice for sale of the

Corporate Debtor by way of Compromise or Arrangement was published in the newspapers.

5. The Appellant Company i.e. M/s. Generous Mercantile Private Limited submitted the scheme of Compromise and Arrangement for taking over the Corporate Debtor i.e. M/s. Spectacular Media Marketing Private Limited as “Whole Company” which was approved in the third meeting of the stakeholders held on 08.06.2021 and the said scheme was also approved from the NCLT vide order dated 07.07.2021 passed in IA-2760/2021 connected in CP(IB) 868(ND)/2019.
6. It is submitted that during Liquidation the Appellant Company took over 100% of the equity shares of the Struck off Company which were issued and allotted to the Appellant Company. Therefore, there was no dissolution of the Struck off company during Liquidation as a Corporate Debtor. Therefore, the entity of the Struck off company exists.
7. The Appellant/Petitioner undertakes to comply with all the provisions of Companies Act, Income Tax Act and other applicable Acts. The Appellant Company is ready to comply with all the compliances of the Companies Act, 2013 and shall file pending Balance Sheets and Annual returns with the Registrar of Companies, NCT of Delhi & Haryana along with additional fees as applicable.
8. Notice was issued to the Registrar of Companies, NCT of New Delhi and Haryana. The Registrar of Companies has submitted a report. It was stated in the report that only after compliance with the requirements to be met under Section 248 of the Companies Act, 2013, the Registrar of Companies has struck off the company's name from the register.
9. RoC has not objected to this application for restoration of the name of the company subject to statutory compliances being made.

10. The provisions of section 252 of the Companies Act, 2013, vests this Tribunal with the discretion that where the Company, whose name has been struck off, is able to demonstrate that it is just and equitable to do so it can restore the name of the Company, in the Register of the Registrar of Companies. The Appellant itself, who now seeks restoration of the name of the Company in the register maintained by Registrar of Companies and company not being a shell company then the company deserves to be restored.
11. According to Section 252(1) of the Companies Act of 2013, any person aggrieved by an order of the Registrar, notifying a company as dissolved under section 248, may file an appeal to the Tribunal within a period of three years from the date of the order of the Registrar and if the Tribunal is of the opinion that the removal of the name of the company from the register of companies is not justified in view of the absence of any of the grounds on which the order was passed by the Registrar, it may order restoration of the name of the company in the register of companies. We are of the considered view that the appeal has been filed within 3 years from the date of the order of the Registrar and the Appellant is covered under the provisions of Sec 252(1). In the light of the above, this company appeal is maintainable in the eyes of law.
12. On perusal of the application, we are satisfied that the name of the company should be restored to the register.
13. Accordingly, the present petition is allowed on the following terms: -
 - a.** The Registrar of Companies, NCT of Delhi and Haryana the respondent herein is directed to restore the original status of the petitioner company as if the name of the Company had not been struck off from the register of Companies with the resultant and consequential actions like changing status of petitioner company from 'struck off' to 'Active'.

- b.** The Struck off Company is directed to file all pending statutory documents including Annual Accounts and Annual returns along with the prescribed fee and additional fee as decided by Registrar of Companies, NCT of Delhi and Haryana within 45 days from the date on which its name is restored on the register of companies maintained by the Registrar of Companies, NCT of Delhi and Haryana.
- c.** The appeal is allowed, subject to payment of costs of Rs. 50,000/- to the Registrar of Companies. The restoration of the Struck off Company's name in the Register will be subject to their filing all outstanding documents for the defaulting years as required by law and completion of all formalities, including payment of any late fee or other charges which are leviable by the Respondent for the late filing of statutory returns. The name of the Struck off Company shall then stand restored- in the Register of the RoC, as if the name of the company had not been struck off.
- d.** The petitioner is directed to deliver a certified copy of this order with the Registrar of Companies, NCT of Delhi and Haryana within thirty days of the receipt of this order.
- e.** On such delivery and after due compliance with the above directions, the Registrar of Companies, NCT of Delhi and Haryana is directed to publish the order in the Official Gazette under his office name and seal.
- f.** This order is confined to the violations, which ultimately led to the impugned action of striking off the name of the Company, and it will not come in the way of the Registrar of Companies, NCT of Delhi and Haryana to take appropriate action(s) in accordance with law, for any other violations/offences, if any, committed by the petitioner company prior to or during the period the name of the Company remained struck off.

14. The Company Appeal No. 65/252/ND/2023 is **Allowed** and **disposed off** accordingly.
15. The Registry is directed to send e-mail copies of the order forthwith to all the parties inclusive of the Counsel.
16. Urgent certified copy of this order, if applied for be issued upon compliance with all requisite formalities.

Sd/-

RAHUL BHATNAGAR
MEMBER (TECHNICAL)

Sd/-

BACHU VENKAT BALARAM DAS
MEMBER (JUDICIAL)