

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-V
Appeal No. 166/252/ND/2020

IN THE MATTER OF:

An application under Section 252 of the Companies Act, 2013

Memo of Parties

M/S Ahuja Hospitality Private Limited

Through Authorized Representative

D-29, Fateh Nagar, Tilak Nagar,

New Delhi-110018

Email: guru78073@gmail.com

Phone: 8527647000

...Petitioner

Versus

Registrar of Companies, NCT of Delhi & Haryana,

4th Floor, IFCI Tower,

61, Nehru Place, New Delhi-110019

...Respondent

Order Reserved on: 05/07/2021

Order Delivered on: 09/08/2021

CORAM:

MR. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)

MR. KAPAL KUMAR VOHRA, MEMBER (TECHNICAL)

PRESENT- Mr. Vipul Aggarwal for IT Department and Ms. Sweety for AROC

Appeal No. 166/252/ND/2020

M/s Ahuja Hospitality Private Limited



ORDER

AS PER MR. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)

Appeal No. 166/252/ND/2020

1. This Appeal has been filed by M/S Ahuja Hospitality Private Limited through Authorized Representative invoking the provisions of Section 252 of the Companies Act, 2013 for restoration of the name of the Appellant Company in the register maintained by the Registrar of Companies, NCT of Delhi & Haryana.

2. As per the averments, M/S Ahuja Hospitality Private Limited was incorporated on 10.07.2012 by the Registrar of Companies, Ministry of Corporate Affairs, Delhi and has its registered office at D-29, Basement, Fateh Nagar, New Tilak Nagar New Delhi-110018 having CIN No. U55100DL2012PTC238579. The business of the appellant company is to purchase & acquire land for establishment of hotels, holidays, resorts, villas, lodgings, stalls, garages, summerhouses, chateaus, castles, inns, hostels, road houses, motels, taverns, rest houses, guest houses and provide consultancy and carry on the business of hospitality, event management and related marketing services as owner, proprietors, franchisee agent, contractor, dealer, supplier, organizers, consultants, designers in the field of running and managing Hotels, Motels, Tourist resorts, holiday resorts, holiday camps, restaurants, group of hotels, guest houses, resorts, holiday resorts, holiday camps, restaurants, group of hotels, guest houses, banquets, canteens,

Appeal No. 166/252/ND/2020

M/s Ahuja Hospitality Private Limited



caterers, café, taverns, pubs, bars, clubs, inns, houses, refreshment rooms and lodging or apartments, house keepers, night clubs, discotheques, swimming pools, sports complexes, gymnasiums, health clubs, baths, dressing rooms, licensed wine, beer and spirit merchants, exporters, importers and manufacturers of aerated, mineral and artificial waters and other drinks packed & non-packed food including fast food products, dairy products, purveyors, caterers for public amusements and places of amusements, recreations, sport and entertainment, travel agents and any other business that can be conveniently carried on in connection therewith and to run, operate and maintenance of food joints and chain of stores including hotels and restaurants and to deal in all kind of packed, non-packed, branded, non-branded food products including fast food products and dairy products, alcoholic and non-alcoholic drinks made for human consumption and also to organise, Aid, Counsel, Assist, Project and Promote all types of fairs, exhibitions including painting exhibitions, trade exhibitions, Events, Star Nights, Fashion Shows, Rural shows, Film premiers, charitable shows, Laser Shows, Sports events and all other connected activities in relation to business of hospitality in India and abroad.

3. A sweeping action was initiated by the ROC at the instance of MCA in striking off the names of several Companies who had not been carrying on any business or operation for a period of two immediately preceding financial years.

Appeal No. 166/252/ND/2020

M/s Ahuja Hospitality Private Limited



The appellant had failed to file its E-forms pertaining to Audited Balance Sheet, Statement of Profit and Loss Account with the report of Auditors and Directors and Annual Returns since incorporation to the Registrar of Companies thereby giving rise to the surmise that the business of the company was not in operation. Consequently, its name was struck off by the Respondent from the Register of Companies under Section 248 of the Companies Act, 2013 vide the order in form STK-7 dated 13.11.2019. The Appellant Company submitted that the Appellant Company or its directors have, till date, not received the notice no. RoCDelhi248(1)3603712019 dated 19.07.2019 and notice in Form STK —5 dated 09.08.2019 mentioned in the impugned notice dated 13.11.2019. Also, it had engaged a Chartered Accountancy Firm for filing of tax returns and conducting statutory compliances/ filing before the Registrar of Companies and the Appellant Company reposed trust in the firm as the same firm was carrying out the filing for the other businesses of the directors of the Petitioner Company for several years.

4. The Company has filed the returns of the income with the Income Tax Authority latest for the assessment year 2017-18 to 2019-20.

5. The Appellant submits that the Appellant Company has been in continuous business operation since its incorporation and, has been regular in preparing its annual return and balance sheets and filing income tax returns with the competent authorities and has certain assets which necessitate



restoration of its name in the record of ROC. In order to corroborate this submission the appellant has placed before us the following evidence:

- i. Copy of Income Tax Returns for the assessment years 2017-18 to 2019-20.
- ii. Copy of GST Returns from July, 2019 to November, 2019.
- iii. Copy of Bank Statements of Current Account having with United Bank of India, Kolkata Account no. 1139050019868 in the name of Appellant Company for the period from 03.06.2019 to 07.01.2020 and 01.04.2017 to 16.01.2020 also placed on record showing operation in their account.

6. RoC submits in its reply cum affidavit dated 31.07.2020 that the appellant company had submitted its last Annual Return and Balance Sheet pertain to the financial year that ended on 31.03.2016 and 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. The office of Respondent issued the notice in the form of STK-1 dated 19.07.2019 intimating the company and directors of the company about the aforesaid defaults and providing them a fair opportunity to respond. Subsequently, the office of Respondent also issued public notice for the same in the form of STK-5 dated 09.08.2019. 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 29.10.2019. As per records of the office of Respondent neither the company was carrying on any operation for a period of two immediately preceding financial years or obtained the status of a Dormant Company under section 455 of the Companies Act, 2013 and ROC prays to direct the company to file all pending Annual Returns and Balance Sheets and other such documents of the subject company with the Registrar of Companies and award cost in favor of the Respondent (Registrar of Companies).

7. The Income Tax Department in its report has referred to the decision of **Hon'ble NCLAT in the case of M/s Alliance Commodities Pvt Ltd Vs. Office of Registrar of Companies in WA, CA(AT) No. 20 of 2016** and submits that while discussing the power of the Tribunal under Section 252 (3) of the Companies Act, 2013, the Hon'ble NCLAT held that: -

“9.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. ... This term “or otherwise” has been judiciously used by the legislature to arm



the Tribunal to order restoration of a struck off company within the permissible time limit to take care of situations where it would be just and fair to restore company in the interest of company and other stakeholders. Such instances can be innumerable. However, this term “or otherwise” cannot be interpreted in a manner that makes room for arbitrary exercise of power by the Tribunal when there is specific finding that the Company has not been in operation or has not been carrying on business in consonance with the objects of the Company....”

8. He further submits that this order of the Hon’ble NCLAT is also upheld by the **Hon’ble Supreme Court in the matter of Alliance Commodities Pvt. Ltd. Vs. Office of Registrar of Companies – WB (CA No. 7258 of 2019) vide order dated 23.09.2019.**

9. We have heard the Ld. Counsel for the appellant, AROC as well as Ld. Counsel for the Income Tax Department and perused the averments made in the memo of appeal, reply and report submitted by the respective parties.

10. Ld. Counsel for the appellant in course of his arguments submits that the appellant had never received any notice from the ROC and the ROC without



giving any reasonable opportunity to the appellant, struck off the name of the company. Therefore, there is a violation of principle of natural justice.

11. He also submits that the appellant has also produced the bank statements and the Income Tax Returns to show that the appellant company was a going concern on the date of striking off the name of the company.

12. During the course of hearing, appellant was directed to produce the audited balance sheet to show that appellant had revenue from operation during the last two preceding financial years from the date of striking off the name of the company but it is seen that the appellant has failed to produce any such document.

13. It is further seen that during the course of pendency of this appeal, the appellant has also filed one Company Application being **CA No. 142/2020** praying therein for early listing of this company appeal. It is further seen that apart from that, the appellant has also prayed to de-freeze the bank account of appellant company, which was frozen in pursuance of the issuance of impugned notice dated 13.11.2019.

14. Since, it is observed that in Company Application no. 142/2020 the composite prayers were made. Therefore, it was ordered to be placed along with the main appeal.



15. The ARoC submits that notice was duly served upon the appellant company, firstly, the notice in the form of STK-1 dated 19.07.2019 was sent to the company and its directors about the aforesaid default. Thereafter, again a public notice in the form of STK-5 dated 09.08.2019 was also published in the Newspapers but no reply was given by the appellant company or by its directors.

16. It is further seen that thereafter, the RoC, **Struck Off** the name of the company vide notice in the form of STK-7 dated 29.10.2019 on the ground that the company was not carrying on any operation for the immediate two preceding financial years.

17. Ld. Counsel for the Income Tax Department has also contended the same and placed reliance upon the decision referred to supra.

18. In the light of submissions, now, we consider the prayer of the appellant and it is observed that the specific averments have been made by the RoC in its reply stating the dates, when the notices were sent upon the appellant company and its directors but appellant company and its directors failed to submit any reply.

19. Hence, we find no force in the contention raised by the Ld. Counsel for appellant that no notice was sent/served upon the appellant company before the date, when the name of company was struck off by the RoC.



20. It is further seen that the appellant has failed to produce the audited balance sheet to show the company had revenue from operation for the immediate two preceding financial years when the name of the company was struck off by the RoC. Therefore, we are of the considered view, the appellant company has failed to produce any document to show that the appellant company had revenue from operation or carrying on business at the time when the name of the company was struck off by the Registrar of Companies.

21. Therefore, at this juncture, we would like to refer the decision of Hon'ble NCLAT in the case of M/s Alliance Commodities Pvt Ltd Vs. Office of Registrar of Companies in WA, CA(AT) No. 20 of 2016 upon which the Ld. Counsel for the Income Tax Department has placed reliance and the same is quoted below: -

“9.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. ... This term “or otherwise” has been judiciously used by the legislature to arm the Tribunal to order restoration of a struck off company within the permissible time limit to take care of situations where it would be just and fair to restore company in the interest of company and other



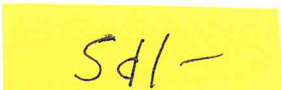
stakeholders. Such instances can be innumerable. However, this term “or otherwise” cannot be interpreted in a manner that makes room for arbitrary exercise of power by the Tribunal when there is specific finding that the Company has not been in operation or has not been carrying on business in consonance with the objects of the Company....


22. The said order is also confirmed by the Hon’ble Supreme Court **in the matter of Alliance Commodities Pvt. Ltd. Vs. Office of Registrar of Companies – WB (CA No. 7258 of 2019) vide order dated 23.09.2019.**

23. In view of the above discussions, we are not inclined to interfere with the action taken by the RoC under Section 248 (5) of the Companies Act, 2016

24. **Accordingly, the appeal is hereby dismissed.**

25. Let the copy of the order be served to the parties.


KAPAL KUMAR VOHRA
Member (T)


ABNI RANJAN KUMAR SINHA
Member (J)