

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
Appeal No.839/252/ND/2018

IN THE MATTER OF:

M/S KAROBAAR COMMODITIES PRIVATE LIMITED
Registered Office:
At Shop No.5, Opposite Birla Mill Gate,
Kamla Nagar, New Delhi-110007

...Appellant /Appellant Company

VERSUS

THE REGISTRAR OF COMPANIES
4th Floor, IFCI Towers,
Nehru Place, New Delhi - 110019

...Respondent

Order Delivered on:22.10.2019

CORAM:

DR. P.S.N.PRASAD, MEMBER(JUDICIAL)

DR. V. K. SUBBURAJ, MEMBER (TECHNICAL)

PRESENT- Vapn & Associates, CS for the Appellant

Mr. M. Yadubhushana Rao, Advocate for AROC

ORDER

Per Dr. V. K. Subburaj (Member Technical)

1. This is an appeal which has been preferred u/s 252 of the Companies Act, 2013 by the Appellant Company in relation to an order of striking off the name of the Appellant Company passed by the Respondent with effect from 30.06.2017 under the provisions of Section 248 of the Companies Act, 2013. Learned authorized representative for the Appellant represents that the Appellant Company was incorporated under the provisions of Companies Act, 1956 and has its registered office at Shop No.5, Opposite Birla Mill Gate, Kamla Nagar, New Delhi-110007. The Company is engaged in the business to carry on the business of and act as finance brokers, dealers, commission agents, buyers and sellers of commodities stocks and shares, securities, debentures, debt instruments, commercial papers and other negotiable instruments, treasury Bills and allied activities and services. Learned authorized representative for the Appellant represents that the Appellant company has been active since incorporation and has also been maintaining all the requisite documentation, as per the provisions of the Companies Act, 1956/2013. However, compliance in relation to the provisions of Companies Act, 2013 with the Respondent RoC by filing annual returns and financial statements has been omitted to be complied with but the said omission is not mala fide.

2. Upon notice to the Registrar of Companies ("RoC"), the RoC has not filed its affidavit on 31.01.2019 in which he pleaded that the company may kindly be directed to prove that it was carrying on business or was in operation and that it is just that the name of the company be restored to the register. However, the Ld. AROC for the RoC appeared and conveyed RoC's no objections to restoration of the Appellant Company subject to terms.

3. We have considered the plea of the Appellant and the representations of RoC. It is evident from the plea of the Appellant that it admits the default and questions the due process undertaken by the RoC in striking off the name of the Appellant Company as envisaged under Section 248 of the Companies Act, 2013. However, the Appellant is seeking restoration of its name in the register as maintained by RoC relying on the ground that the Appellant as of date is in business and has liabilities (long term) and substantial trade receivables and in the circumstances, it is just that the name of the Company should be restored on the register of RoC as maintained by the Respondent. In order to sustain the said plea, the Appellant has placed before us the following documents:

Sd/-

- i. Acknowledgement for filing Income Tax Returns for the year 2012-13 only.
- ii. True Copies of Financial Statements and Balance Sheet for the Financial Years 2011-12 to 2017-18 with details of Long Term Borrowings to an extent of Rs. 10,09,02,374/- and trade receivables of Rs. 5,91,68,216/- as on 31.08.2018.
- iii. Bank Account Details of ICICI Bank Limited of Punjabi Bagh Branch and Karur Vysya Bank Ltd. of Lawrence Road Branch.
- iv. A copy of the Certificate of Membership of MCX issued by the MCX Commodity Exchange dated 13.08.2009.

4. A perusal of the documents referred to in the paragraph above, reflects that the appellant has business operations which necessitate restoration of its name in the Register of Companies. The assumption of RoC that the company was not in operation was merely on grounds of non-filing of the Statutory Returns. The Act itself provides for redressal of these defaults. A step as stringent as what has been taken at least requires an opportunity to the appellant to take remedial measures. Merely to disallow restoration on grounds of its failure to file annual returns would neither be just nor equitable. As per several decisions of various Courts it should only be in exceptional circumstances that Courts should refuse restoration where the company has been struck off for

Sd/-

its failure to file annual return as that would be excessive or inappropriate penalty for that oversight.

5. Accordingly, the appeal is allowed subject to payment of costs of Rs. 25,000/- to the Prime Minister Relief Fund. The restoration of the Appellant 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 Appellant Company shall then stand restored in the Register of the RoC, as if the name of the company had not been struck off.
6. The direction for freezing the bank account(s) of the Appellant Company, if on this ground, shall consequently be also set aside immediately to enable the company to carry out its business operation. Compliance of this order for restoration shall be made by the Respondent with all its consequential effects within one week of compliance by the Appellant.
7. The petition is disposed of accordingly.
8. Let the copy of the order be served to the parties.

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(DR. V.K.SUBBURAO)
MEMBER (TECHNICAL)

S - d

(DR. P.S.N.PRASAD)
MEMBER (JUDICIAL)

Deepak