

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, BENCH - VI
Appeal No. 64/252/ND/2023

IN THE MATTER OF:

INCOME TAX OFFICER, WARD 13(1), NEW DELHI

HAVING ITS OFFICE AT

CENTRAL REVENUE BUILDING, I.P ESTATE,

NEW DELHI – 110002

...APPELLANT

Versus

1. REGISTRAR OF COMPANIES, DELHI

HAVING ITS OFFICE AT:

4TH FLOOR, IFCI TOWER, 61, NEHRU PLACE,

NEW DELHI – 110019

...RESPONDENT NO. 1

2. M/s JANINA TREXIM INDIA PRIVATE LIMITED

[CIN : U52100DL2014PTC263959]

[PAN : AADCJ3043J]

172, BASEMENT SITE-1, NEW RAJINDER NAGAR,

BEHIND SHANKAR ROAD, FIRE STATION NEW DELHI - 110060

...RESPONDENT NO.2

3. Mr. NISHANT AGGARWAL, DIRECTOR

172, BASEMENT SITE-1, NEW RAJINDER NAGAR,

BEHIND SHANKAR ROAD, FIRE STATION NEW DELHI - 110060

[DIN: 07126495]

...RESPONDENT NO.3

4. Mr. DEEPAN KUMAR, DIRECTOR

172, BASEMENT SITE-1, NEW RAJINDER NAGAR,

BEHIND SHANKAR ROAD, FIRE STATION NEW DELHI - 110060

[DIN: 07126552]

...RESPONDENT NO.4

CORAM:

SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)

SHRI RAHUL BHATNAGAR, HON'BLE MEMBER TECHNICAL)

APPEARANCES

**For the IT Department/Appellant: Mr. Parth Semwal, Mr. Abhishek Maratha
and Mr. Apoorv Aggarwal, Standing**

Counsels

**For the RoC: Ms. Shankari Mishra and Mr. Aakash Sharma,
Advocates**

ORDER

PER: RAHUL BHATNAGAR, MEMBER (TECHNICAL)

ORDER DELIVERED ON: 02.07.2024

1. This Application has been filed by the Income Tax Officer, Income-Tax, Ward 15(1), New Delhi hereinafter referred to as "the Appellant" invoking the provisions of Section 252 (3) of the Companies Act, 2013 (The Act) for restoration of the name of the respondent Company M/s. Janina Trexim India Private Limited, in the Register maintained by the Registrar of Companies (RoC), NCT of Delhi & Haryana. The authorized capital of the respondent company is Rs.1,00,000/- and its paid-up share capital is Rs.1,00,000/-.
2. Notice was issued to Respondents vide order dated 20.07.2023.

3. On 19.10.2023, Ld. Counsel for the RoC appeared before this Tribunal and submitted that generally they do not oppose the application filed by the Income Tax Department to restore the company.
4. None appeared on behalf of the remaining respondents. Therefore, respondents other than RoC were set ex-parte vide order dated 14.03.2024 of this Tribunal.
5. Vide affidavit dated 07.06.2024, the Ld. Counsel for Income Tax Department has placed on record the demand notice u/s 156 of the Income Tax Act, 1961 issued against the assessee company on 12.12.2019, wherein a demand of Rs. 99,34,984/- has been raised against the assessee for the Assessment Year 2017-18.
6. As per the averments of Income-tax Department, M/s Janina Trexim India Private Limited, was incorporated on 24.01.2014 as an unlisted private limited company and had its Registered office at 172, Basement Site-1, New Rajinder Nagar, Behind Shankar Road, Fire Station, New Delhi – 110060 [CIN : U52100DL2014PTC263959] and [PAN : AADCJ3043J].
7. That since the respondent company has not filed its return, and had thereby concealed its income chargeable to tax to the tune of Rs. 80,88,580/-, The Income Tax Officer, Ward-13(1) Delhi issued Show Cause Notice dated 07.03.2022 u/s 274 read with Section 271AAC(1) of the Income Tax Act, 1961, as to why penalty u/s 271AAC(1) should not be made against the respondent company.
8. Subsequently, the IT Department contended that the respondent company have failed to comply with the aforesaid official notice.
9. That during the course of Income Tax proceedings for the assessment year 2017-18, income of respondent company was determined wherein income chargeable to tax under section 115BBE of the Income Tax Act, 1961, was also included/added back to its income chargeable to tax.

10. That on further enquiry, it was discovered that the assessee company (respondent herein) was not in existence and has been struck-off vide Notice No. ROC/DELHI/248(5)/STK-7/4865 dated 08.08.2018 appearing at S. No - 9894.

11. Hence, the appellant prayed to allow the present appeal.

ORDER

12. Apparently, there are outstanding tax dues against the Respondent no.2 Company which were much prior to the striking off the name by RoC. Accordingly, Revenue Department have to take coercive steps against the Respondent Company and its Directors which may include criminal proceedings. Hence, it is required that the company's name must be restored as assessment proceedings against a dead company may not be sustainable in the eyes of law.

13. Further, in order to render Assessment Order valid in the eyes of Law and to enable the Appellant to take steps for recovery of taxes and for any further consequential proceedings, the respondent no.2 company's name must be restored to the Register of Companies as if the name of the company was never struck off.

14. Also, that in the guise of the fact that the Respondent company is a non-existent entity, the Respondent company and its directors are trying to escape the demands and the prosecution proceedings and the liability that will arise out of the said proceedings.

15. In sequel of the above said discussion, we are of the view that the appellant herein succeeded in showing that there exist prima facie outstanding tax liabilities on the part of Respondent No.2 company i.e., M/s JANINA TREXIM INDIA PRIVATE LIMITED, and that it got struck-off from the register of the Registrar of the Companies.

16. We are in agreement with the submission of the Applicant that the Income Tax Department is a creditor u/s 252(3) of the Companies Act, 2013. That for the purpose

of reopening of assessment proceedings and to be able to recover its dues by the Income Tax Department, the Company has to be in existence.

17. As per Section 252(3) of the Companies Act, 2013, this Tribunal finds that “it is just and equitable” to restore the name of the Company to its original in the Register of RoC.
18. In above circumstances, this **Application is allowed**. The Registrar of Companies is, therefore, directed to restore the name of the respondent-company in their Register and also proceed to take such other action against the Respondent in accordance with the statutory provisions. The name of the Respondent Company shall, then as a consequence, stand restored to the Register of the Registrar of Companies, as if the name of the Company had not been struck off in accordance with Section 248(1) of the Companies Act, 2013.
19. We, however, make it clear that this Tribunal has only directed restoration of the name of the respondent company in the Register of Companies maintained by the RoC on the basis of averments made in the appeal and in no way endorsed or have adjudicated about their entitlement to recover which shall be adjudicated by the Income Tax Department subject to the Law of limitation governing such recoveries. Charges involved in seeking restoration of the respondent-company’s name with the office of the ROC shall be borne by the appellant. Compliance be made by the RoC within 30 days.
20. The direction for freezing the Bank Account(s) of the respondent 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 company with all its consequential effects within one week of compliance by the Appellant.

21. The Application is **allowed** and accordingly disposed off. Let copy of the order be served to the parties.

-SD/-

RAHUL BHATNAGAR
MEMBER (TECHNICAL)

-SD/-

MAHENDRA KHANDELWAL
MEMBER (JUDICIAL)