

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH

COURT-VI

Appeal No.855/252/ND/2018

IN THE MATTER OF:

Marwah And Associates Private Limited

.....Petitioner

VERSUS

The Registrar of Companies

...Respondent

Order Delivered on: 13.09.2019

Coram:

(Dr.)P.S.N PRASAD, HON'BLE MEMBER (J)

(DR. V.K. SUBBURAJ, HON'BLE MEMBER (T))

For the Petitioner: Manoj Kumar, Adv.

For the ROC: Mr. M Yadubhushana Rao.

For the Income Tax: Vibhooti Malhotra, Sachin, Adv.

ORDER

(Dr.) P.S.N PRASAD, HON'BLE MEMBER (Judicial)

1. The erstwhile director of Marwah And Associates Private Limited bearing CIN NO: U74899DL1983PTC015216 has filed the present

Appeal, invoking the provision of section 252 of the Companies Act, 2013 for restoration of the name of the petitioner company in the register maintained by the Registrar of Companies, NCT of Delhi and Haryana.

2. As per the averments, by Marwah And Associates Private Limited, it was incorporated on 11.02.1983 having its registered office at W-121, Greater Kailash, New Delhi within the jurisdiction of this Tribunal. The main object of Company is *"To carry on the business of manufacturers, assemblers, fabricators, exporters and importers of all kind of electronic appliances.*
3. It is submitted by the appellant that a sweeping action was initiated by the ROC at the instance of MCA in striking of the names of several Companies who had failed to file their Statutory Returns. The appellant had not filed its Annual Returns and balance sheet since Financial Year ending 31.03.2012, thereby giving rise to the surmise that the business of the company was not in operation. Consequently, its name was struck off w.e.f. 07.06.2017 by the Respondent from the Register of Companies under Section 248 of the Companies Act, 2013, upon taking steps in accordance with law and issuing a notification in the Official Gazette. The names of the effected companies was posted on its website.

4. The appellant has submitted that since its incorporation, the company is active and has been carrying on business since its incorporation. The Appellant has further submitted that although the Balance sheet and Annual Returns for the Financial Years up to 3.03.2017 were prepared in time but the same could not be filed with ROC within time as there was inadequate secretarial staff.
5. In support of the application and to sustain the plea for restoration, the petitioner has placed before this Tribunal the following documents:
 - i. Copies of Auditor's Report and balance sheet for the financial year 2015-16, 2016-17 and 2017-18.
 - ii. Copies of Income Tax Return for the Assessment Year 2015-16, 2016-17, 2017-18 and 2018-19. The Tax paid by the Company for the Year 2017-18 is Rs. 3,07,772/- and for the year 2018-19 is Rs. 73,113/- which clearly shows that the company is doing business and it's an ongoing concern.
 - iii. Copy of Bank Statement from 01.04.2016 to 07.05.2018 which shows a reasonable number of day to day transactions of the company.
 - iv. Copy of GST return for the year 2018-2019.

- v. Copy of rent invoice raised by the Company for April-2016 to August 2016 and Aril 2018 to August 2018 From the bare perusal of the rent invoices submitted by the applicant it is seen that the rent paid by the applicant for the month of June, July and August, 2018 are Rs. 212,400/-on the monthly basis which clearly shows that the company is doing its business.
- vi. Copy of TDS form 26AS for Assessment Year 2017-18 and 201819.
6. The balance sheet for the year 2017-18 filed by the applicant indicates that the company has the Equities and liabilities of Rs. 18,657,111.08 for the year ending 31.03.2017 and 17,594,353.08 for the year ending 31.03.2016. Further the Company has revenue from income including the other income is Rs. 1,568,118/- for the year 31.03.2017.
7. It is pertinent to mention here despite due service of notice the Income Tax Department has yet not filed its reply to the appeal.
8. The provisions pertaining to restoration of the name of the company have been provided in Section 252 of the Companies Act, 2013 and the same envisage that if the Tribunal is of the opinion that the removal of the name of the company from the Register of the 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. On perusal of the documents referred to in paragraph 5 above, a reasonable presumption can be inferred that the company was active before being struck off from the register.

9. Accordingly, the petition is allowed subject to payment of costs of Rs. 25,000/- to the Prime Minister Relief Fund. The restoration of the petitioner 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 petitioner company shall then stand restored in the Register of the Registrar of Companies, as if the name of the company had not been struck off in accordance with Section 248(5) of the Companies Act, 2013 with all consequential effects and benefits.
10. 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 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's time of compliance by the appellant.
11. The petition is disposed off accordingly.

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

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**DR. V.K. SUBBURAJ,
MEMBER (T)**

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**DR. P.S.N PRASAD,
MEMBER (J)**