

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH - VI
Appeal No. 972/252/ND/2018

IN THE MATTER OF:

**1. Nanak Com Private Limited
3 Kali Bari Marggole Dakkhana
New Delhi**

...Appellant 1/Appellant Company

**2. Harish Kumar Jaggi
S/o Madan Lal Jaggi
R/o A49, Amar Colony,
Lajpat Nagar IV
New Delhi-110024**

...Appellant 2

**3. Inderjeet Kaur Bindra
S/o Punjab Singh
R/o WZ-203, Shiv Nagar, Gali No. 12
New Delhi-110058**

...Appellant 3

**4. Rashmi Jaggi
D/o Dharam Sablok Veer
R/o House No. A-49, Amar Colony
Lajpat Nagar, New Delhi-110024**

...Appellant 4

VERSUS

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

...Respondent

Order Delivered on: 22.01.2020

CORAM:

JUSTICE (RETD.) RAJESH DAYAL KHARE MEMBER(JUDICIAL)

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

Counsel for Appellant: Mr. Ashish Middha, Advocte and Naresh Kumar
Sharma, Practicing Company Secretary.

Counsel for Respondent: Mrs. Sweety Khattar, AROC

Counsel for Income Tax: Mrs. Lakshmi Gurung, Advocate.

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 08.08.2018 under the provisions of Section 248 of the Companies Act, 2013. Learned counsel for the Appellant represents that the Appellant Company was incorporated under the provisions of Companies Act, 1956 and has its registered office at 3 Kali Bari Marggole Dakkhana New Delhi. The Company is engaged in the business of Internet Service provider, E- commerce, cybercafe, hiring and letting of Internet services. Learned counsel 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 filed its affidavit and reply. The Learned counsel 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 active business and has been preparing all its financial statements 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:
 - i. Acknowledgement for filing Income Tax Returns for the years 2015-16 to 2017-18.
 - ii. True Copies of Financial Statements and Balance Sheet for the Financial Years 2015 to 2017 with details of Revenue from operations for an amount of Rs. 39,21,4343/- as on

31.03.2017 and TDS payable for an amount of Rs. 15,810/- for the period ending 31.03.2018. The Company has also availed inter corporate loans for an amount of Rs. 1,39,42,465/-.

iii. Copy of Bank statement by the appellant's Bank for the period from 04.04.2015 to 14.09.2018.

iv. Copy of the GST Certificate issued on date 20.12.2017.

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

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(DR. V.K. SUBBURAJ)
Member (Technical)

(JUSTICE (RETD.) RAJESH DAYAL KHARE)
Member (Judicial)

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RDS

Note: In terms of Rule 151 of NCLT Rules, 2016 and in view of Hon'ble Member (Judicial) sitting at the Allahabad Bench at NCLT, Uttar Pradesh this order is being pronounced on behalf of Bench – VI by Hon'ble Member (Technical) Dr. V. K. Subburaj.

Nanak Com Pvt. Ltd.
Appeal No. 972/252/ND/2018

Prabhat
22.01.2020
Court Officer