

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT - IV

COMPANY APPEAL NO. 158/ND/252/2023

IN THE MATTER OF:

1. **M/S AMISAN SOLUTIONS PRIVATE LIMITED & ORS.**
HOUSE NO.- FLAT NO. 41, G.F A-6, PKT-1,
SECTOR34, MANOKAMNA APPT & BARW ALA,
ROHINI, DELHI 110042

...APPELLANT NO. 1

2. **MR. AMITAB SINGH**
H.NO-183, SHRI RADHA TOWN, ANGANPURA,
MATHURA, UTAAR PRADESH-281006

... APPELLANT NO. 2

3. **MR. SAJIV KUMAR MISHRA**
R/O PLOT NO-65, SHAKTI SAI NAGAR MALLAPUR
RR DISTRICT HYDERABAD
TELANGANA-500076

... APPELLANT NO.3

VERSUS

1. **REGISTRAR OF COMPANIES,**
NCT OF DELHI & HARYANA
4TH FLOOR, IFCI TOWER, 61, NEHRU PLACE
NEW DELHI-110019

...RESPONDENT NO. 1

2. **INCOME TAX DEPARTMENT**
315, C.R. BUILDING, I.P. ESTATE
NEW DELHI-110019

...RESPONDENT NO. 2

Order Delivered on: 02.07.2024

CORAM:

SHRI MANNI SANKARIAH SHANMUGA SUNDARAM, HON'BLE MEMBER
(JUDICIAL)
DR. SANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Appellant : Mr. Jitendra Kumar, PCS
For the ROC : Mr. Sumeet Kaul, Adv.

For ITD

: Mr. Vipul Agrawal, Senior Standing Counsel,
Mr. Gibran Naushad, Ms. Sakshi Shairwal, Advs.

ORDER

PER: DR. SANJEEV RANJAN, MEMBER (TECHNICAL)

1. The present appeal has been filed by the Appellants under Section 252 (3) of the Companies Act, 2013 for restoration of name of the company i.e. M/s Amisan Solutions Private Limited, which was struck off by the Registrar of Companies, NCT of Delhi and Haryana (Respondent) vide Public Notice ROC-DEL/248(1)/STK-7/6869 dated 13.12.2022 (company name appears in Sr. No. 415 in the impugned order).
2. Brief facts of the case, as mentioned in the instant company appeal, which are relevant to the issue in question, are as follows: -
 - a) The Appellant submits that the company i.e., M/s. Amisan Solutions Private Limited was incorporated on 04.04.2019 under the Companies Act, 2013 bearing CIN: U74999DL2019PTC348341, having its registered office situated at House No.- Flat No. 41, G.F A-6, Pkt-1, Sector-34, Manokamna Appt & Barwala, Rohini, Delhi 110042
 - b) The Appellants submitted that there was delay on the part of the Petitioner Company in not filing the necessary statutory documents with the respondent since the financial years 2020- 2022, which was solely attributable to certain circumstances beyond the capacity of the Petitioner Company. The copy of the balance sheet for the year ending on 31.03.2021 and 2022.
 - c) It is further submitted that due to COVID-I9 and other unavoidable situations, the Petitioners were unable to concentrate on the business and therefore they could not file the necessary statutory documents with the respondent since the financial year ending on 31st March 2020, 31st March, 2021 and 31st March 2022.
 - d) That the compliances relating to filing of Balance Sheets and annual returns with the Registrar of Companies got ignored inadvertently and unintentionally. Neither Petitioner Company nor Petitioner No. 2 and 3 have any malafide intention by not making the required compliance

with the respondent. That after its incorporation, the Company has remained fully functional entity and at no point of time its operations were suspended.

- e) The Appellant Company is having Current Bank Account in HDFC Bank having Statement of Account Number 50200040671565 located at Plot no 4, Capital Trust House II Maa Anandamayi Marg, Okhla Industrial Area Phase II New Delhi- I 10020. A statement of the said Account Number for the period 2022-2023 is annexed with the application.
 - f) The Appellant Company is carrying on the business and has filed GST Return till September, 2022, Income Tax Return for the assessment year 2022- 23 and Tax Audit Report for the assessment year 2022-23 is showing that the petitioner company is a going concern and is in operation at all times since inception. The copies of GST return for the month of April, 2022 to September, 2022, Income Tax Return for the assessment year 2022-23 and Tax Audit Report for the assessment for the assessment year 2022-23 of the Petitioner Company are placed on record.
 - g) Further, the Appellant Company humbly submits that the Appellant Company has been regular in preparing annual accounts and also holding its board meetings, general meetings of the shareholders as and when required, maintain proper records, registers.
 - h) The Appellant Company presently has 2 shareholders and directors. The list of the Petitioner Company is annexed with the application.
 - i) It is affirmed in the petition that here are no proceedings under Sections 210 to 229 of the Companies Act, 1956 pending against the Petitioner Company. No proceedings under Section 241 and 242 of the Companies Act, 2013 have ever been instituted against the Petitioner Company.
 - j) The appellant declared that no matter regarding with this Appeal has not been pending before any Tribunal of law or any other Authority.
3. During the course of proceeding dated 06.02.2024, the Ld. Counsel for the Registrar of Companies endorsed that the RoC has no objection, if this appeal filed under Section 252(3) of the Companies Act, 2013

stands allowed subject to filing of financial statements with requests fee.

4. The Income Tax Department in its report dated 05.02.2024 stated that which is reproduced hereunder:-

2. That it is pertinent to mention herein that the assessee company, i.e. Amisan Solutions Private Limited is having huge outstanding demand amounting to INR 3,81,240 as on date for the following years:

- i. INR 1,92,480 for AY 2021-22
- ii. INR 1,88,760 for AY 2022-23

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3. Accordingly, the any restoration of the company's name pursuant to the present Appeal ought to take place subject to the Department's rights to recover the outstanding tax demand of the Applicant assessee in accordance with law.

5. Heard. Record has been thoroughly perused. We observe that the Appellant in order to sustain his case, has placed reliance on the following documents: -

- a) Copy of GST Returns for the month of April and September 2022.
- b) Copy of Income Tax Return, Form 3CA and 3CD Acknowledgment for the Assessment Year 2022-23.
- c) Copy of the balance sheet for the year ending on 31.03.2021 and 31.03.2022
- d) Statement of bank account maintained with HDFC Bank from 01.01.2022 to 31.03.2023.

6. At this juncture, it will advantageous to examine the requirement of Section 252(3) of the Companies Act, 2013 insofar as grant of relief to the appellant is concerned. The Section 252 (3) of the Act is reproduced below for better appreciation:

“252. Appeal to Tribunal. –

(1)

(2)

(3) If a company, or any member or creditor or workmen thereof aggrieved by the company having its name struck off from the register of companies, the Tribunal on an application made by the company, member, creditor or workmen before the expiry of twenty years from the publication in the Official Gazette of the notice under subsection (5) of section 248 may, if satisfied that the company was, at the time of its name being struck off, carrying on business or in operation or otherwise it is just that the name of the company be restored to the register of companies, order the name of the company to be restored to the register of companies, and the Tribunal may, by the order, give such other directions and make such provisions as deemed just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off from the register of companies.”

7. In connection with the non-filing of statutory records, it is pertinent to refer to the findings of Hon’ble High Court of Delhi in the matter of ***Mace Platronics Pvt Ltd Vs ROC, reported in (2010) 104 SCL 277 (Del)***, wherein it was held that:

“When the name of the company was struck off after following the prescribed procedure for non-filing of statutory records, even though the contentions of the company that the officials entrusted with responsibility of filing documents had failed to do so cannot be accepted yet since the company was a running company and the application had been filed in time, the court had power to restore the name of the company.”

8. Hence, upon considering the facts and circumstances of this present petition, this bench is of the view that it would be just and fair to order restoration of the name of the struck off Company namely M/s Amisan Solutions Private Limited in the Register of Companies maintained by the ROC.

9. Accordingly, this Petition is allowed. The restoration of the Company's name to the Register of Companies maintained by the ROC, is hereby ordered, subject to the following directions namely-
- a) The restoration of the Company's name i.e., M/s Amisan Solutions Private Limited is subject to the payment of cost of Rs. 50,000/- (Rupees Fifty Thousand Only) to be paid to the Registrar of Companies, NCT of Delhi and Haryana. The name of the Company shall then, as a consequence, stand restored to the Register of the Registrar of Companies, as if the name of the company has not been struck off in accordance with Section 248(1) of the Companies Act, 2013.
 - b) The Registrar of Companies, NCT of Delhi & Haryana (Respondent) is directed to restore the original status of the Appellant Company as if the name of the company has not been struck off from the Registrar of Companies with resultant and consequential actions like changing status of the company from 'struck off' to "Active".
 - c) The Appellant is directed to file all pending statutory document(s) including Annual Returns and Balance Sheets in default along with prescribed fee/additional fee/fine as prescribed under the Companies Act, 2013 within 45 days from the date on which its name is restored on the Register of Companies by the ROC, NCT of Delhi and Haryana (Respondent). Consequently, thereupon the bank account/s if any subject to freeze shall get de-frozen and to be operated by the company.
 - d) The Appellant is directed to submit a certified copy of this order to ROC, NCT of Delhi and Haryana within thirty days (30) of the receipt of this order.
 - e) This order is confined to the violations, which ultimately leads to the impugned action of striking of the name of the Company M/s Amisan Solutions Private Limited, and it will not come in the way of Respondent to take appropriate action(s) in accordance with law, for any other violations/offences, if any, committed by the

Appellant Company prior or during the striking off of the said Company.

- f) Resultantly, the present appeal i.e., **COMPANY APPEAL NO. 158/ND/252/2023 stands allowed** with aforesaid terms.

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

File be consigned to records.

Sd/-

**DR. SANJEEV RANJAN
MEMBER (TECHNICAL)**

Sd/-

**MANNI SANKARIAH SHANMUGA SUNDARAM
MEMBER (JUDICIAL)**