

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH

COURT-VI

Appeal No.371/252/ND/2020

IN THE MATTER OF:

i. Retro Consultants Private Limited

Having Its Registered Office At:

D-1/6, Village Palam

New Delhi-110045

.....Appellant/Petitioner

Versus

i. Registrar Of Companies

Nct Of Delhi And Haryana, New Delhi

ii. Income Tax Department,

New Delhi Branch.

.....Respondents

Order Delivered on:

Coram:

SHRI. P.S.N. PRASAD

Hon'ble Member (Judicial)

DR. V.K. SUBBURAJ

Hon'ble Member (Technical)

For the Petitioner: Ms. Shivangi Singh, Advocates.

For the Income Tax Department: Mr. Parth Semwal, Advocate.

Appeal No.371/252/ND/2020



ORDER

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

1. The erstwhile director of Retro Consultants Private Limited bearing CIN NO: U74900DL2009PTC189822 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 Retro Consultants Private Limited is incorporate on 29.04.2009 having its registered office at TF (Third Floor), F/S (Front Side) D1/6, Village Palam New Delhi South West Delhi 110045, within the jurisdiction of this Tribunal. The Authorized Capital of the company was Rs. 1,00,000/-. The Paid-up Capital of the company was Rs. 1,00,000/- . The main objects of the company were as "To give lease rent to financial institutions.
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 its 31.03.2016, thereby giving rise to the surmise that the business of the company was not in operation. Consequently, its name was struck off 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 were posted on its website.

4. The appellant has submitted that they could not file the balance sheet and annual return since 31.03.2016 along with relevant documents with the ROC. The appellant has further submitted that non-Compliance in filings of financial statements with registrar of Companies were done without any mala fide intention on the part of the applicant. The company has also submitted that the company has prepared its financial statements on timely basis.
5. In order to sustain the plea for restoration, the petitioner has placed before us the following documents:
 - i. Copies of duly Audited Financial Statement for the financial year 2016-17 to 2019-20.
 - ii. Copy of Bank Statement of Company for the period of 01.04.2016 to 31.10.2020, which shows day to day transactions which are substantial in nature. The Bank Account of the company is frozen after the striking off the Company.
 - iii. Copy of Form 26AS of the Company for Financial Year 2016-17 to 2019-20.



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- iv. Copy of Work Orders received by the Company from its customers during the period of 2018 to 2020.
6. It is submitted by the appellant that the company was generating decent sales for the last three financial year when the company was stuck off.
7. It is pertinent to mention here that as per the balance sheet of of 31.03.2019 and 31.03.2020 the Revenue from operation for the year 31.03.2019 is 46,16,021/- and for the year 31.03.2020 is Rs. 25,54,964/-, which shows the Company was in operation at the time of being struck off.
8. The Roc and Income Tax department has filed its report and have not raised any objection for the restoration of the company.
9. The provisions pertaining to restoration of the name of the company has been provided in Section 252 of the Companies Act, 2013 and the same envisages 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. Further, restoration may also be directed by the Tribunal if it is just and equitable to restore the name of the company in the Register of Companies.



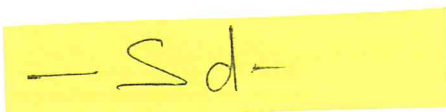
10. The Act itself provides for redressal of these defaults. Merely to disallow restoration on grounds of its failure to file annual returns would neither be just nor equitable. As per several decisions of various Courts it should only be in exceptional circumstances that Court should refuse restoration 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.
11. Accordingly, the appeal is allowed subject to payment of costs of Rs. 50,000/- to the Prime Minister Cares 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.
12. 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



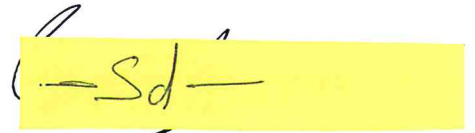
for restoration shall be made by the respondent with all its consequential effects within one week of compliance by the appellant.

13.The petition is disposed of accordingly.

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



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



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