

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT – II)

Item No.224
Appeal/141/252/2023

IN THE MATTER OF:

**Shareman Research and
Advisory Servicesprivate Limited**

... Applicant/Petitioner

Versus

**The Registrar of Companies NCT of Delhi &
Haryana**

... Respondent

Under Section: 252 (3)

Order delivered on 10.05.2024

CORAM:

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)

SH. SUBRATA KUMAR DASH, HON'BLE MEMBER (T)

PRESENT:

For the Applicant : CS Shivam Rastogi, CS Ashutosh Pal, Adv. Rushil Mittal

For the IT Deptt. : St. Counsel Parth Semwal, St. Counsel Abhishek Maratha and St. Counsel Apoorv Agarwal

Hearing Through: VC and Physical (Hybrid) Mode

REPORTABLE

ORAL ORDER

The factual backdrop involved in the appeal has been enumerated in para 4

(i) to (x), 12 of the appeal reads thus:

- i) The Appellant Company i.e., Shareman Research and Advisory Services Private Limited, was incorporated under the Companies Act, 1956 on 06/05/2019 having CIN: U74999DL2019PTC349596 limited by shares with the Registrar of Companies, NCT of Delhi and Haryana, having its registered office at D-248, office no 304-305, g/f gali no 10, near metro station Laxmi Nagar east Delhi 110092. The Authorised Share Capital of the Appellant company is Rs.1,00,000/- (Rupees One Lac Only) divided into10,000 (Ten Thousand Equity Shares of Rs.10/- each) and Issued, Subscribed and Paid-up Share Capital is Rs. 50,000 (Rupees Fifty Thousand Rupees only) divided into 5,000 (Five Thousand Equity shares of Rs.10/- each). Certified true copy of incorporation certificate of the Appellant Company dated 06/05/2019 issued by the Respondent No.1 is annexed herewith and marked as **Annexure A-2.**

- ii) That the main objects of the Appellant Company are:
- To carry on the business of purchasing, acquiring , trading ,buying, selling, broking ,transferring ,disposing ,advising of or dealing in , on behalf of clients in any shares , stocks, debentures, debenture stocks, bonds, obligations, units, mutual funds, securities, including government, securities, options, producers, policies, book debts., claims, certificates and as broker, sub-broker of shares, stocks, and securities, as managers, advisors and registrars to the capital issues, guarantors, advisors and consultants in relation to securities and to take over running stock broking business of any person or firm or company and so long as the company is engaged in stock broking as a member of any recognized stock exchanged in India, it will engage itself in only such business as a member of a recognized stock exchange as is permitted to engage in under the securities and contracts (Regulation) Rules, 1957 and the Rules, Byelaws, Memorandum and Articles of Association of the stock Exchange.
- Certified True Copy of the Memorandum and Articles of Association of the Company is also annexed herewith and marked as Annexure A-3 (Colly).
- Year ended 31st March 2020 to 31st March 2022 are annexed herewith and marked as Annexure A-4(Colly).
- vi) That Sub-Section (6) of Section 248 of the Companies Act, 2013 provides that the Registrar, before passing an order of strike off the name of the Company under sub-section. shall satisfy himself that sufficient provision has been made for the realisation of all amounts due to the company and for the payment or discharge of its liabilities and obligations by the company within a reasonable time. However, there was no such provision made under Section 248(6) of the Act by the Registrar of the Companies before Striking off the name of the Appellant Company.

vii) That the Respondent herein vide notification dated 28th September 2022 issued a public notice wherein 7849 Companies were struck off from the register of companies with the effect from 28th September 2022. It is submitted that Appellant's name was also included in the said list even though no notice was ever sent to the appellant company or any of its directors. The name of the Appellant Company was mentioned at Sr. No.6038 of the said notice. Further, as per Section 248(5) of the Act, after publication of the said show cause notice, if proper cause is not shown, the respondent may strike of the name of the company and shall publish a notice thereof in the official gazette. It is submitted that, as no individual notice was issued to the Appellant Company or to its directors, they remained unaware about the proposed action against them and were not able to file any representation against striking off the name of the Appellant. Copies of relevant extracts of notification dated 28th September 2022 issued by respondent under Section 248(1) of the Act is annexed herewith and marked as Annexure A-5.

iii) The details of shares held by each shareholder:

S. No.	Name of Shareholders	No. of shares subscribed	Total subscription amount	Percentage of holding
1.	Mr. Rahul Rajak	2500	Rs. 25,000/-	50%
2.	Mr. Vishal Kumar	2500	Rs.25,000/-	50%

iv) That Mr. Rahul Rajak and Mr. Vishal Kumar are the only directors of the Appellant Company, and they are the persons responsible for running the day-to-day affairs of the Appellant Company. The Appellant states that the subscribers to the memorandum of Struck off company has deposited the subscription money to the Company but failed to file the declaration in advertence to this effect as per the provisions of the Companies Act. That the Appellant further submits that the accounts of the appellant company were prepared and audited and that the company had engaged the services of a professional to perform the task of filing of the required declaration under sub-section (1) of Section 10A and returns with the office of the Registrar of Companies and who did not file the same and did not reveal this fact to the Directors of the company. It is further submitted that it was only on 28th day of September, 2022 at the time of issuance of Notice under section 248(1) of the Companies

Act, 2013, when the fact non - filing of the declaration in E-Form INC 20A to this effect and other documents with the Respondent No.1, was came to the knowledge of Appellant Company.

- v) The Annual Accounts for the Financial Years ended 31st March 2020 to 31st March 2022 were duly prepared but not adopted in respective Annual General Meeting of the Appellant Company under the relevant provisions of the Companies Act, 2013 as the Annual General Meetings was not conducted due to inadvertence. The Certified true copy of the Annual Accounts for the Financial
- viii) That the respondent issued another notification dated 13th December 2022 under Section 248(1) of the Act, striking of names of 7658 Companies with effect from 13th December 2022. It is submitted that in absence of any representation or reply, the Appellant's name was also included in the said notification at Sr. No.5889. It is reiterated that no notice was issued either to the Appellant Company or any of its directors in fact. No correspondence pertaining to the aforesaid action has been received by the Appellant Company or any of its directors in respect of or pursuant to the procedure mentioned herein above. True copy of relevant extracts of notification dated 13th December 2022 issued by respondent under Section 248(1) of the Act is annexed herewith and marked as Annexure A-6.
- ix) That the procedure followed by the respondent is against the provisions of Section 248 of the Act and the notification issued in the official Gazette on 28th September 2022 and thereafter striking off the name of the Appellant company from the register of Companies on 13th December 2022 is not only complete violation of the principles of natural justice but, also contrary to the procedure laid down by the law. It is submitted that, before acting against the Appellant Company under the provision of Section

248(1), the respondent is duty bound to ascertain proper and complete reasons to believe that the appellant Company's subscribers to the memorandum have paid the subscription money since the date of Incorporation or nor and only after that any action could have been taken against the Appellant Company.

- x) That it is imperative to mention here that the Appellant company inadvertently and due to the lack of professional guidance by the former professional could not file the pending declaration and other statutory documents with the Respondent No.1 from the financial year 2019-20 to 2021-22, and consequently, the Respondent No.1 published a notice and struck off the Appellant company without giving any notice, neither to the company nor to the directors of the company.
- xii) That the Board of Directors of the Appellant Company has authorised Mr. Vishal Kumar, Director of the Appellant Company to file the present petition for the aforesaid purpose. The Appellant further assures this Hon'ble Tribunal that all the possible steps are being taken so that there should not be any lacking on behalf of the company in future. Certified True Copy of Board Resolution dated 01st April 2023 authorising Mr. Vishal Kumar for filing the present appeal is annexed herewith and marked as Annexure A-9.

2. It is the case espoused on behalf of the Appellant that the non-filing of Form INC-20 was on account of lapse on the part of the professional engaged by the company. According to him, the lapse was only technical in nature otherwise the company had commenced the business.

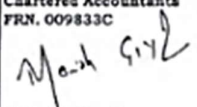
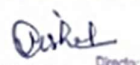

3. The salient ground espoused in the appeal for setting aside the order of striking off name of the company from the register of companies maintained by RoC and its restoration is that it was not that the procedure prescribed in Section 248 of the Companies Act could not be complied with before striking

off the name of the company from the relevant register, as instead of giving individual notice to the Appellant Company, the RoC only issued public notice in this regard.

4. The sole object of the notices dated 28.09.2022 and 13.12.2022 was to weed out defunct companies and not to strike off such companies from the relevant register, which were doing the business.

5. As has been averred in the appeal (supra), the Appellant had engaged the professional to file required form –INC-20 under sub-section (1) of Section 10A as also the returns before of Registrar of Companies but he could not file the same. It was only on 28.09.2022, at the time of issuance of notice under Section 248(1) of the Companies Act, 2013, that the Appellant came to know about the lapse committed by the professionals in filing E-Form (INC-20A). The annual accounts qua the Appellant for the Financial Year sending 31.03.2020 and 31.03.2022 were duly prepared but not adopted in respective Annual General Meeting of the Applicant Company in terms of the extant provisions of the Companies Act. In para 4(11) (supra), the Appellant has made specific averments that it had commenced the business as required, in terms of the provisions of Section 10A of the Companies Act.

6. It is seen from the statement of profit and loss for the period ending on 31.03.2022 that the Appellant company had revenue from operation. The relevant excerpt of the statement reads thus:

Statement of Profit & Loss for the Period ended 31.03.2022			
			Amount (INR) *
Particulars	Note No.	For the Year Ended 2022	For the Year Ended 2021
Income:			
Revenue from operations		7755042.78	11,061
Other Income		-	-
Total Revenue		7,755,043	11,061
Expenditure:			
Changes in Inventory of finished goods		-	-
Cost of Materials Consumed		-	-
Finance Costs		-	-
Audit fee	5	40000	20,000
other Expenses	6	7728583	247,776
Total Expenses		7,768,583	267,776
Profit before exceptional and extraordinary items and tax		(13,540)	(256,715)
Exceptional Items		-	-
Profit before extraordinary items and tax		(13,540)	(256,715)
Extraordinary Items		-	-
Profit before tax		(13,540)	(256,715)
Tax expense:			
(1) Current tax		-	-
(2) Deferred tax		-	-
Profit(Loss) from the period from continuing operations		(13,540)	(256,715)
Profit/(Loss) from discontinuing operations		-	-
Tax expense of discounting operations		-	-
Profit/(Loss) from Discontinuing operations		13,540.22	256,714.63
Profit/(Loss) for the period		(13,540)	(256,715)
EPS		(2.71)	(51.34)
Significant Accounting Policies		A	
NOTES ON FINANCIAL STATEMENTS		1-10	
As per our Report of even date.			
In terms of our audit report of even date		For and On Behalf of Board of Directors	
For Manish Damodar & Co.		For Shareman Research And Advisory Services Pvt. Ltd	
Chartered Accountants		For Shareman Research And Advisory Services Pvt.	
FRN. 009833C		Shareman Research And Advisory Services Pvt. Ltd	
			
(Manish Goyal)		Vishal Kumar	
Partner		Director	
M. No. - 428497		(DIN 08436152)	
Place : Jaipur			
Date : 17/03/2023		Rahul Rajak	
UDIN: 23428497BQVWGU9832		Director	
		(DIN 08436166)	

7. The Registrar of Companies (NCT- Delhi and Haryana) filed its report espousing therein that the name of the Appellant Company had to be struck off from the Register of Companies as per the provisions of Section 248(1)(c) of Companies Act, 2013, read with Rule 9 of the Companies (Removal of Names of Companies from Register of companies) Rules, 2016 as the Company had failed to comply with the provisions of subsection (1) of section 10A of the Companies Act, and had not filed any return for a period of 2 years immediately preceding financial years. Nevertheless, in para 10 of the reply of

report, the RoC has made an observation that for the financial year 2021-22, the Appellant had earned the revenue from the operation. The para 10 of the report reads thus:

10. As per the information provided by the Petitioner, it is observed as under:

Sr. No.	Particulars	Remarks
1.	Revenue from Operations.	As per Profit & Loss A/c attached. F.Y. 2019-20: NIL F.Y. 2020-21: NIL F.Y. 2021-22: 7,755,043
2.	Audited Financial Statement	Submitted with Petition for the Financial Year 2019-20, 2020-21 and 2021-22
3.	Bank Statement	Submitted with Petition for the period 04.01.2019 to 04.03.2023
4.	Income Tax Return	Not Submitted with the petition

8. Besides, in the concluding para of the report, the RoC has left it for this Tribunal to take its own view in the matter.

9. As can be seen from para 6 of the Report, the public notice in Form STK-5 was issued on 28.09.2022 and as per the observation made in para 10 of the report, for the financial year 2021-22, the Appellant had earned revenue by operation. From the stand taken in the report itself, it is apparent that the Appellant Company was doing business and it was only on account of lapse on the part of the professional that the Form-INC-20 could not be filed.

10. The concerned Jurisdictional Assessment Officer, Income Tax has in its report, stated that the Department reserves its right to initiate and continue proceedings qua the Appellant and the Income Tax Act. The report of the Deputy Commissioner of Income Tax reads thus:



**OFFICE OF THE
DEPUTY COMMISSIONER OF INCOME TAX CIRCLE 22 (2),
ROOM NO. 225E, C.R. BUILDING, I. P. ESTATE, NEW DELHI
Phone No. 011 - 23705340, Email: delhi.dcit22.2@incometax.gov.in**

F.No.DCIT/CIRCLE 22 (2)/NOC/2023-24/ 340

Dated: 06/02/2024

To,

Sh.Shailendra Singh,
Advocate, Senior Standing Counsel
Income Tax Department Office
J-29, First floor, Jangpura Extension, Delhi-110014

Subject:- Allocation of Company Application No.141/252/2023 of 2023 in the matter of section 252 read with section 248 of the Companies Act, 2013 for restoration of the name of the company and in the matter of Shareman Research and Advisory Services Private limited PAN : ABCCS0168D Vs Registrar of Companies

Ref:- e.mail dated 05/12/23 received from Pr.CIT-7, Delhi.

Sir

Kindly refer to the trailing mail on the above mentioned subject. The requisite information in this regard is as under:- The observations/report in respect of M/s Shareman Research and Advisory Services Private limited (for restoration company) is as under :-

M/s Shareman Research and Advisory Services Private limited (ABCCS0168D)	
1. Whether there is any Income Tax demand pending against the company? If yes, the quantum thereof may kindly be communicated. In view of the above, it is requested that the concerned Assessing Officers for each of the above Companies prepare their respective para-wise comments or instructions with respect to the present Company Petition for restoration of the name of the company.	Total demand pending against the assessee is NIL in any Assessment Year as on date. "No Data Found" shows in the ITBA system. In the present case, in the proposed scheme of restoration of the name of the company.
2. The details of any proceeding under the Income Tax Act pending against the above Company, if any	As per the ITBA system of Circle- 22(2), New Delhi, no proceeding is pending against the company.
3. Whether the Income Tax Department would have any objection to the said Scheme Arrangement for restoration of the name of the company the being approved by	Department/Revenue reserves its right to initiate and/or continue proceedings under the IT Act, 1961.

the Hon'ble NCLT? If yes, the detailed reasoning behind such objection may kindly be provided	Department/Revenue reserves its right behind to recover any demand payable by the company, if it comes to the knowledge of the department. As in the present case, for restoration of the name of the Company this office has no objection.
4. Any other details or instructions which may have a bearing on the case in order to safeguard the interest of the Revenue	Company has filed ITR only for A.Y 2021-22

Yours Faithfully

(Rajiv Ratan Singh)
Deputy Commissioner of Income Tax,
Circle-22(2), Delhi

RAJIV RATAN SINGH
Deputy Commissioner of Income Tax
Circle-22(2), New Delhi

11. Apparently, the Income Tax Department has no objection to restoration of the name of the companies to the Register of Companies and is of the view that on restoration of the name of the companies to RoC, it will resort to the appropriate procedure for recovery of the Income Tax dues.

12. In view of the aforementioned, we are of the view that the appeal deserves to be allowed. Ordered accordingly.

13. The Appellant is directed to be restored in the list of companies within 30 days from the date of furnishing the copy of this order to RoC, subject to completion of all formalities required to be completed in terms of the Companies Act, 2013 and payment of fee/additional fee and penalty, as are leviable as per the said Act and or other extant Rules and Regulations. **The Appeal stands disposed of.** The Appellant shall pay cost of Rs. 1 Lac in Prime Minister's National Relief Fund.

Sd/-
(SUBRATA KUMAR DASH)
MEMBER (T)

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)