

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH

COURT-VI

Appeal No.251/252/ND/2020

IN THE MATTER OF:

ARGOSY OVERSEAS PRIVATE LIMITED

Mr. Suresh Chandra Srivastava

Mrs. Sunita Srivastava

.....Petitioners

VERSUS

THE REGISTRAR OF COMPANIES

INCOME TAX DEPARTMENT

(GOVERNMENT OF INDIA)

...Respondent

Order Delivered on: 07.09.2020

Coram:

SHRI. P.S.N. PRASAD

Hon'ble Member (Judicial)

DR. V.K. SUBBURAJ

Hon'ble Member (Technical)

For the Petitioner: Mr. Narender Thakur, CS, Mr. Lokesh Kumar and
Mr. Prashant Badola, Advocates.

For the Respondent: Mrs. Sweety Khattar Kumar, AROC.

For the ITD: Mr. Manas, Advocate for Ms. Easha Kadian, St. Counsel.

Appeal No.251/252/ND/2020



ORDER

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

1. The erstwhile director of Argosy Overseas Private Limited bearing CIN NO: U51109DL1989PTC036784 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 Argosy Overseas Private Limited, is incorporate on 03.08.1989 having its registered office at GF-4, Prabhat Kiran 17, Rajindra Palace, New Delhi within the jurisdiction of this Tribunal. The Company is engaged in the business of chemicals.
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 31.03.1999, 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 was posted on its website.

4. The appellant has submitted that they could not file the balance sheet and annual return since the F.Y. ended on 31.03.1999 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 Appellant Company has also submitted that they shall not make any default of the same nature in future.
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 2016-2017 to 2018-2019.
 - ii. Copy of the Lease Deed in favour of Appellant Company.
 - iii. Copy of the latest proof payment of Lease amount dated 20.09.2019 in the name of the Appellant Company to the U.P. State Industrial Development Corporation Limited.
 - iv. Copy of the screen shot of online portal of Uttar Pradesh State Industrial Development Authority reflecting the name of the Appellant Company.

- v. Copy of Electricity bill of the last three financial years.
6. It is pertinent to mention here that as per the order dated 24.08.2020 of this Tribunal the AROC has submitted their no objection in reviving the company. Also as per the same order the counsel for appellant has submitted that necessary affidavit accompanied by latest tax returns have been filed and the same is also on record.
7. 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.
8. 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. The assumption of ROC that the company was not in operation was founded merely on grounds of non-filing of the Statutory Returns. 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.

9. Accordingly, the appeal 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 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.

11. The petition is disposed of accordingly.

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

- Sd -

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

- Sd -

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