

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-VI
Appeal No.366/252/ND/2020

IN THE MATTER OF:

Freeplay Energy India Limited
Registered Office:
At 28, Sardar Patel Marg,
New-Delhi- 110021

...Appellant /Appellant Company

VERSUS

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

...Respondent

Order Delivered on: 23.12.2020

CORAM:

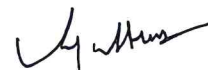
SHRI. P.S.N PRASAD, MEMBER(JUDICIAL)

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

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 June, 2017 under the provisions of Section 248 of the Companies Act, 2013. Learned authorized representative for the



Appellant represents that the Appellant Company was incorporated on 24.01.2007 under the provisions of Companies Act, 1956 and has its registered office at 21-A, Krishan Kunj Extn, Part-II, Laxmi Nagar, Delhi-110092. The main object of the company is to carry on the business as manufacturers, producers, makers, promoters, developers, importers, suppliers, wholesalers, distributors of energy products in India and in other SAARC countries. Learned authorized representative 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 in which he pleads that the company may kindly be directed to prove that it was carrying on business or was in operation and that it is just that the name of the company be restored to the register. However, the Ld. AROC for the RoC appeared and conveyed RoC's no objections to restoration of the Appellant Company subject to terms.

Despite opportunities given, there was no response from the Income Tax Department and it was decided to proceed further.



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 business and has revenue from operations 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. True Copies of Financial Statements and Balance Sheet for the Financial Years 2013-14 to 2015-16 with details of other income as Rs. 3,50,007 for 2015 and Rs 16,765 for 2016 respectively.
- ii. Acknowledgement for filing Income Tax Returns for the years 2013-14 & 2015-16 on record.
- iii. Fresh Certificate of Incorporation dated 17.06.2019 post the conversion of the appellant company into a Public Limited Company filed on record.

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. 50,000/- to the Prime Minister Care 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. 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)