

Note:

In order to benefit the Stake holders and petitioner these 252 appeals is taken up for early disposal to enable the concerned party to have the benefit of CSFS Scheme which is due for closure on 31.12.2020. The order has been directly uploaded on the website of the National Company Law Tribunal.


Court Officer

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH

COURT-VI

Appeal No.427/252/ND/2020

IN THE MATTER OF:

- i. Gurdeep Kaur GulatiPetitioner No. I
Having Registered Office At: 86-C Deep Enclave,
Pocket D, Ashok Vihar,
Phase-III, North West Delhi.
- Through
- ii. Mr. Sandeep SinghPetitioner No. 2

Versus

- i. Registrar of Companies, NCT of Delhi & Haryana
4th floor, IFCI Tower,61, Nehru Place, Delhi
.....Respondent No. I
- ii. Income Tax Authority Respondent No. 2

Order Delivered on: 29.12.2020

CORAM:

**SHRI. P.S.N. PRASAD
HON'BLE MEMBER (JUDICIAL)
DR. V.K. SUBBURAJ
HON'BLE MEMBER (TECHNICAL)**

Present:

For the Petitioner: Mr. Lalit Mohan, Advocate.

For the Income Tax Department: Ms. Easha Kadian, St. Counsel.

For the ROC: Mr. M. Yadubhusa Rao, AROC.

Appeal No.427/252/ND/2020

ORDER

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

1. The erstwhile directors of Gurdeep Kaur Gulati bearing CIN No. U52100DL2014PTC27872 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 Gurdeep Kaur Gulati is incorporated on 03.11.2014 having its registered office at 6-C, LIG Flats, Phase-III Ashok Vihar, Delhi 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. 10,000/-. The main objects of the company were as to carry on the business of providing manufacture related services.
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 31.03.2015 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

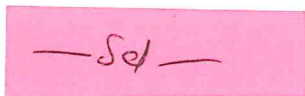
steps in accordance with law and issuing a notification in the Official Gazette. The names of the effected companies were posted on its website.

4. The appellant has submitted that they could not file the balance sheet and annual return since 2015 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 because of lack of proper professional guidance, oversight and inadvertent reasons. The company has also submitted that the company has prepared its financial statements on timely basis.
5. It is pertinent to mention here that as per the order dated 24.12.2020 the Counsel for the department of Income Tax has appeared and has submitted its no objection.
6. 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 2017 to 2019.
 - ii. Copy of purchase order by the name pf the company.
 - iii. Copies of Acknowledgment of filing IT returns from A.Y 2017-18 to 2019-2020.
 - iv. Copy of Bank statement from 09.12.2014 to 16.11.2019 showing substantial transactions.
 - v. Copy of GST returns.

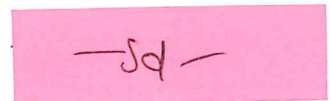
7. It is pertinent to mention here that the income as per the balance sheet of F.Y 31.03.2018-31.03.2019 the company has total revenue from operations of Rs. 520,594/- has some short-term loans and advances of Rs. 8,364/-.
8. The provisions pertaining to restoration of the name of the company has been 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.
9. 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.
10. 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.

11. 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.
12. The petition is disposed of accordingly.
13. Let the copy of the order be served to the parties.



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



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