

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, BENCH - VI
APPEAL NO. 279/252/ND/2023

IN THE MATTER OF:

Smt. Santosh Agarwal,
D/o Sh. Munshi Lal
R/o BN-41, East Shalimar Bagh, North West Delhi – 110088.

... APPELLANT

Versus

1. REGISTRAR OF COMPANIES,
NCT OF DELHI & HARYANA
4th Floor, IFCI Tower, 61, Nehru Place,
New Delhi-110019.

... RESPONDENT No. 1

2. DCIT (High Court Cell)
(For Vivid Chem Private Limited)
PAN No. AAHPA6766E
Lawyer's Chamber,
Block No. 1, Room No. 428 & 429
Hon'ble Delhi High Court, New Delhi.

... RESPONDENT No. 2

3. M/s Vivid Chem Private Limited
Through Director
Registered Office: 1741/127, Shanti Nagar, Trinagar, New Delhi.

... RESPONDENT No. 3

4. Ms. Neelam Jadon
D/o Sh. Tilak Singh
R/o B-61, Pushpanjali Enclave,
VTC Pitampura, PO Saraswati Vihar,
North West Delhi, Delhi- 110034.

... RESPONDENT No. 4

CORAM:

SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)
SHRI RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Appellant:

Adv. Manoj Kumar

For the RoC:

Adv. Aakash Sharma

For the Income Tax Department:

Mr. Puneet Rai, Sr. St. Counsel, Mr. Rishabh Nangia, Jr. St. Counsel, Mr. Ashwini Kumar, Jr. St. Counsel, Adv. Nikhil Jain. CS Pradeep Kumar Sahoo for R-4. Mr. Rajiv Kumar, Chartered Accountant for R3. Mr. Viplav Acharya. Jr. Standing Counsel.

ORDER

PER: RAHUL BHATNAGAR, MEMBER (TECHNICAL)

ORDER DELIVERED ON: 16.07.2024

1. This is an appeal filed under section 252(3) of the Companies Act by the Shareholder of the struck-off Company namely M/s Vivid Chem Private Limited [CIN: U24299DL1986PTC025851] seeking restoration of the said company which was struck off from the Register of Companies maintained by the Respondent No. 1 (RoC) vide its Notice No. ROC-DEL248(5)/STK-7/5071 with effect from 01.09.2017 under the provisions of Section 248(1)(c) of the Companies Act, 2013 read with Rule 9 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016.
2. Initially, the Company whose name has been struck off and other shareholders had not been made party to this appeal and no consent from the Shareholders had been filed by the Appellant. In terms of order dated 20.12.2023, this Tribunal granted time to appellant to file the amended memo of parties. The said compliance was taken on record subsequently by this Tribunal vide its order dated 22.02.2024.
3. Notice was issued to Respondents vide order dated 22.02.2024 to file their appearance and reply.

4. On 11.07.2024, the following parties appeared before this Tribunal and submitted as follows: -

- (i) Proxy Counsel on behalf of RoC appeared and submitted that they had filed their report and subject to filing of necessary reports and documents by the company, they have no objection if the name of the company is restored.
- (ii) Authorized Representatives of Respondent(s) No. 3 and 4 were present and on instructions submitted that they have filed an affidavit indicating that they have no objection if the name of the company is restored.
- (iii) Ld. Counsel for the Income Tax Department submitted that they have no objection if the name of the company is restored.

5. **The applicant has made the following submissions in their petition: -**

- a. That the applicant is a shareholder of M/s Vivid Chem Private Limited (Respondent No.3) and has been its shareholder since 23.10.1986.
- b. The Company was incorporated under the provisions of Companies Act, 1956 on 23.10.1986 and has its registered office at: 1741/127, Shanti Nagar, Trinagar, New Delhi.
- c. The Authorized Capital of the Company is Rs. 2,00,000/- and the Paid-up Capital of the company was Rs. 20/- as per Master Data of the company attached with the present petition.
- d. It is further contended that the present authorized capital of the Company is Rs. 40,00,000 /- divided into 4,00,000 equity shares of Rs 10/- each. The present Issued, Subscribed, and Paid-up capital of the Company is Rs. 39,75,000 /- divided into 3,97,500 equity shares of Rs 10/- each.

e. The company had the following shareholders: -

S. No.	Name and Address of Members	Face Value per Equity Shares (in Rs.)	No. of Equity Shares held/subscribed
1.	Vivid Securities Private Limited	10/	1,18,000
2.	Hari om Jadon	10/	13,505
3.	S.C. Agarwal	10/	10,000
4.	Santosh Agarwal	10/	12,000
5.	Neelam Jadon	10/-	7,000
6.	Hari Om (HUF)	10/-	2,000
7.	S.C. Agarwal (HUF)	10/-	2,000
8.	Other Small Shareholders	10/-	2,32,995
Aggregate			3,97,500

f. It is further contended that there were 2 directors of the company: -

(i) Mrs. Santosh Agarwal.

(ii) Ms. Neelam Jadon.

g. The company called and convened the First Annual General Meeting for the year ending on 31.03.1997 and adopted the audited accounts which include a balance sheet, Profit & Loss Account and notes to account with Audit Report for the audit of accounts for the year ending 31.03.1987. It is further contended that later on, the Company had called and convened the Annual General Meeting for each financial year within the time limit prescribed under the Companies Act, 1956 and Companies Act, 2013.

- h. Appellant submits that the company is a closely held enterprise and due to lack of professional guidance and support, failed to meet requisite statutory compliances, however now seeks an opportunity to rectify them and undertakes to be diligent and abide with all statutory compliances duly in future exercising abundant caution without fail.
- i. That, the Company is having ownership of land located in Sikandrabad, Bulandshahar, Uttar Pradesh identified as bearing no. B-17, situated at industrial area, Sikandrabad, Bulandshahar, Uttar Pradesh. To retain the ownership of land in its name the Company needs to be active in the records of Registrar of Companies, Delhi & Haryana. The Copy of the Conveyance Deed of land has been annexed to the petition.
- j. That since M/s. Vivid Chem Private Limited (Company) has not filed its Balance Sheet in the prescribed Form for the Financial Year beginning from 1986-87 to till date, so the Registrar had taken the view that the Company is in-operational and removed its name from the Register of Companies.
- k. That the Company was not able to file its financial statements and annual returns for the relevant financial years within the time limit prescribed under the Act. That the non-filing in the filing financial statements and returns for the relevant financial years were neither willful nor intentional but due to lack of professional support and guidance as it is a small company and had not appointed a whole-time Company Secretary in employment with the Company. The Management of the Company is not professional and well versed with the provisions of the Companies Act, 2013.

1. That the Company has filed its Income Tax Returns for the relevant financial year under the Income Tax Act, 1961. That, the Audited Financial Statement for the relevant financial years (2018-19 to 2022-23) had also been duly approved by the Shareholders at the Annual General Meetings held on respectively.
 - m. That, the Company was operational and working till the date of removal of its name by the Registrar from the Register of Companies.
 - n. The appellants have prayed to allow the present restoration appeal of the company herein namely M/s Vivid Chem Private Limited with such direction(s) as deemed fit by this Tribunal in the interest of justice.
6. **The respondent RoC have made the following submissions in their reply: -**
- a. The Authorized Capital of the company was Rs. 200,000/-. The Paid-up Capital of the company was Nil as per Master Data of the company.
 - b. That as per available records on MCA 21 portal, there is no record available of the last Directors of the Company.
 - c. That as per Memorandum of Association of the struck off company, the main objects of the company are as follows: -
"To manufacture, produce, refine, import, export, or otherwise deal in all kinds of heavy & light chemicals, industrial and fine chemicals, chemical elements and compoundsetc".
 - d. That the company was incorporated on 23.10.1986 and the subscribers to the memorandum did not pay the subscription which they had undertaken to pay at the time of incorporation of a company and a declaration to this effect has

not been filed within one hundred and eighty days of its incorporation under subsection (1) of section 10A.

- e. Moreover, no subsequent documents had been filed by the company with this office to obtain the status of a "Dormant Company" under Section 455 of the Companies Act, 2013. Hence, the RoC had reasonable cause to believe that the company was not in operation, and therefore, the name of the company was considered for striking off from the Register of Companies.
- f. That the RoC had issued notice in the form of STK-1 on March 2017 intimating the company and the directors of the company at their registered office about aforesaid defaults, providing them a fair opportunity to respond. Subsequently, the RoC also issued public notice for the same in the form of STK-5 dated 13.06.2017. Thereafter, the name of the company was struck off as per the provision of Section 248(1)(d) of the Companies Act, 2013 read with Rule 9 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 vide Notice in the form of STK-7 dated 01.09.2017.
- g. The RoC pleaded that the action of striking off of the present Company was legal and justified, as the subscribers to the memorandum did not pay the subscription which they had undertaken to pay at the time of incorporation of a company and a declaration to this effect has not been filed within one hundred and eighty days of its incorporation in terms of subsection (1) of section 10A of the Companies Act.

h. The RoC has made following observations on the basis of information provided by the appellant: -

S.NO	PARTICULARS	REMARKS
1.	REVENUE FROM OPERATIONS	As per Profit & Loss A/c attached. F.Y. 2018-19 to F.Y. 2022-23 Showing Revenue as Nil.
2.	AUDITED FINANCIAL STATEMENTS	Submitted with the petition F.Y. 2018-19 to F.Y. 2022-23.
3.	BANK STATEMENT	NOT SUBMITTED WITH THE PETITION
4.	INCOME TAX RETURN	Submitted with the Petition.

i. However, during the course of arguments, Proxy Counsel on behalf of RoC appeared before this Tribunal on 11.07.2024 and submitted that they have filed their report and subject to filing of necessary reports and documents by the company, they have no objection if the name of the company is restored.

ANALYSIS AND FINDINGS

7. 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. However, the Appellant is seeking restoration of the company's name in the register as maintained by RoC relying on the ground that due to lack of professional support, the directors/members of the company were unable to do statutory filings as prescribed by law.
8. In our experience of company restoration appeal matters, generally one or two compliances get inadvertently missed out on the part of the management due

to some odd reason. However, in the present case, since the incorporation in 1986, the company has blatantly committed violation of non-filing of relevant documents with the respondent RoC. Clearly, the directors have not been diligent in conducting their duties.

9. Ordinarily, the nature of omissions in filing compliances and their prolonged duration in the present case is of a grave degree and warrants dismissal of the appeal. However, the contention that the company has parallelly prepared its Audited Financial Statement(s) for the relevant financial years (2018-19 to 2022-23) which had been duly approved by the Shareholders at the Annual General Meetings held from time to time respectively, inspires hope that the affairs of the company might somewhat be active and it is not a lost cause yet.
10. The basic proposition of Law which recognizes a Corporation as an “Artificial Legal Person” is for the reason that the company would engage in productive activity in the interest of public at large and simultaneously also provide a means of livelihood to its employees. However, such lackadaisical approach of the management (as in the present case) challenges the authority of the Regulator to enforce the provisions of the law and is strongly condemned.
11. Nevertheless, Appellant is now willing to rectify the omission instantly with abundant precaution as to all statutory compliances in the future. It seeks an opportunity to continue its business operations in future.
12. Having considered submissions of all the parties and considering the appreciation of documents placed on records to substantiate their respective

claims, we are of the view that it is that the name of the Company may be restored on the register of companies as maintained by the Respondent RoC.

13. In Purushottamdass and another (Bulakidas Mohta Company Private Limited V. Registrar of Companies, Maharashtra & Others.), The Hon'ble Bombay High Court observed as follows: -

20. "The objects of Section 560(6) of the Companies Act, is to give a chance to the company, its members and creditors to revive the company which has been struck off by the Registrar of Companies, within a period of 20 years, and to give them an opportunity of carrying on the business only after the company judge is satisfied that such restoration is necessary in the interests of justice".

14. In M.A. Rahim & another V. Sayri Bai, the Division Bench of Hon'ble Madras High court, reported in MANU/TN/0218/1973, has held that the word just' connotes reasonableness and something confirming to 'Rectitude' and 'Justice ', something Equitable and Fair.

15. The directors are cautioned and hereby directed to abide by all statutory compliances duly in future, without fail due to any reason whatsoever.

16. In-fact, the prolonged non-compliance by the company has also led to information asymmetry. For instance, the RoC in their report submitted that there are no directors as per the record maintained in the master data of the company. However, on the other hand, applicant contended that the company has 2 directors presently as discussed aforesaid. These glaring

disparities must not arise and the Company should act in an upright manner henceforth, else shall be held accountable and liable as per Law.

17. Be that as it may, **the appeal is allowed**, subject to payment of costs of Rs. 2,00,000/- (Rupees Two Lakhs only) to be borne by the appellant payable to the Registrar of Companies. The restoration of the 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 RoC for the late filing of statutory returns. The name of the Company shall then stand restored in the Register of the RoC, as if the name of the company had not been struck off.

18. The direction for freezing the bank account(s) of the struck-off 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.

19. The appeal is **allowed** and disposed of accordingly. Let the copy of the order be served to the parties.

-SD/-
(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

-SD/-
(MAHENDRA KHANDELWAL)
MEMBER (JUDICIAL)