

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH - VI
Appeal No. 385/252/ND/2020

In the matter of:

SKS POWER PRIVATE LIMITED
(Through Surender Kumar Singh)
Registered office:
RZ-1/57, Tugalakabad Extn, South Delhi,
New Delhi- 110019

...Appellant Company

Versus

REGISTRAR OF COMPANIES,
NCT of Delhi and Haryana,
4th Floor, IFCI Tower,
61, Nehru Place,
New Delhi- 110019

...Respondent

Order Delivered on: 24.12.2020

CORAM:

SHRI. P.S.N. PRASAD, MEMBER (JUDICIAL)
DR. V. K. SUBBURAJ, MEMBER (TECHNICAL)

Counsel for Appellant: CS. Loveneet Handa
Counsel for Respondent: Mr. M. Yadbhushana Rao and Mrs.
Sweety Kumar, AROC



ORDER

Per SH. P.S.N. PRASAD, MEMBER (JUDICIAL)

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 30.07.2017 under the provisions of Section 248 of the Companies Act, 2013. Learned counsel for the Appellant represents that the Appellant Company was incorporated under the provisions of Companies Act, 1956 and has its registered office at RZ-1/57, Tugalakabad Extn, South Delhi, New Delhi- 110019.
2. The Company is engaged in the business of designing, supply of power plant and related business. Learned counsel 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.



3. Upon notice to the Registrar of Companies ("RoC"), the RoC has filed its affidavit and reply. The Learned AROC for the RoC appeared and conveyed RoC's no objections to restoration of the Appellant Company subject to terms.
4. Notice was duly served to the Income Tax Department and despite several opportunities no reply has been filed by the Income Tax Department.
5. 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 active business and has been preparing all its financial statements 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 Audited Financial Statements for the Financial Years 2017-18 to 2019-20 with details of Fixed Assets for an amount of Rs. 69,047/- as on 31.03.2019 and has cash and cash equivalent of Rs. 67,723/- as on 31.03.2019.
 - ii. Copy of the Property lease deed dated 29.03.2007 made between appellant and U.P State Industrial Development Corporation Limited of plot No. B-25 situated at Industrial area Balbahadurpur, Distt. Pauri Garhwal.
6. 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 by the appellant company. 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.

7. Accordingly, the appeal is allowed subject to payment of costs of Rs. 50,000/- to the Prime Minister CARES 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.
8. 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.

9. The application is disposed of accordingly. Let the copy of the order be served to the parties.

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(DR. V.K. SUBBURAJ)
Member (Technical)

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(SHRI. P.S.N. PRASAD)
Member (Judicial)

RDS