

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
Appeal No.265/252/ND/2019

IN THE MATTER OF:

M/S GWALCO PRIVATE LIMITED
REGISTERED OFFICE AT:
UB-38, ANTRIKSHA BHAWAN,
22 KG MARG, CONNAUGHT PLACE,
NEW DELHI-110001

IN THE MATTER OF:

MR. GAURAV GUPTA
R/O: H-20, FIRST FLOOR,
SECTOR-39,
NOIDA-201301 UP

...APPELLANT NO. 1

MAHADEVI GUPTA
R/O: 3/51B, BHARATPUT HOUSE,
AGRA-282002 UP

...APPELLANT NO. 2

MRS. ARCHANA GUPTA
R/O: 3/51B, BHARATPUT HOUSE,
AGRA-282002 UP

...APPELLANT NO. 3

MR. SANJAY GUPTA
R/O: 3/51B, BHARATPUT HOUSE,
AGRA-282002 UP

...APPELLANT NO. 4

MR. NARENDRA KUMAR GUPTA
R/O: 3/51B, BHARATPUT HOUSE,
AGRA-282002 UP

...APPELLANT NO. 5

Vs.

THE REGISTRAR OF COMPANIES
NCT OF DELHI AND HARYANA

4TH FLOOR, IFCI TOWER,

Appeal No.265/252/ND/2019



61, NEHRU PLACE
NEW DELHI- 110019.

...RESPONDENT NO.1

UNION OF INDIA, MINISTRY OF FINANCE
THROUGH- DEPARTMENT OF INCOME TAX,
PRINCIPLE CHIEF COMMISSIONER OF INCOME TAX,
CR BUILDING, IP EXTENSION, NEW DELHI-110002 ...Respondent No.2

Order Delivered on: 09.12.2019

CORAM:

JUSTICE (RETD.) RAJESH DAYAL KHARE, MEMBER(JUDICIAL)

MS. SUMITA PURKAYASTHA, MEMBER (TECHNICAL)

PRESENT- CS Laxmi Narayan Taparia, for Petitioner

Mr. M. Yadubhushana Rao, AROC, for ROC



ORDER

Per Justice (Retd.) Rajesh Dayal Khare (Member Judicial)

1. This petition has been filed by M/s Gwalco private limited., having its Registered Office at UB-38, Antriksha Bhawan, 22 K G Marg, Connaught Place, New Delhi-110001 incorporated on 27.10.1978 CIN No. U74899DL1978PTC009281 under the Companies Act, 1956 for restoration of the name of the Appellant in the Register of Companies maintained by the RoC, Respondent no.1.

2. Under the proceedings initiated by the Ministry of Corporate Affairs, through the office of the RoC, names of several companies were struck off for want of filing Statutory Returns and Public Notice issued U/s 248(5) of the Companies Act, 2013 whereby notice was given that Respondent no.1 had reasonable cause to believe that the Appellant company had been carrying on any operation for a period of two immediately preceding financial years and have not made any application within such period for obtaining the status of dormant company under Section 455 of the Companies Act, 2013. Further on 08.08.2018, the respondent ROC issued Notice in Form STK-7 u/sec.248(5) of Companies Act, 2013 whereby the name of the Appellant no.1 Company was struck off from the Register of the Registrar of Companies maintained and thus the company's name was struck off.



3. The Appellant Company states that it is the duty of the part time junior accountant of the company to fulfill all the statutory requirements of the company. He left job with informing the directors about the filing of Balance sheet & Annual Returns. Due to inadvertence and the miscommunication between the individual assigned in the office of Appellant Company to oversee the accounts of the auditors, there was an inadvertent default in filing of the Returns or Financial Statement since FY 2015 -18 hence, the name of the Company was duly struck off from the Register of Companies.
4. The Appellant Company is ready to submit all relevant documents from the financial year ending 31.03.2014 onwards before the respondent.
5. The Appellant Company submits that it has been in continuous business operation, has been regular in filing of its income tax returns with the competent authorities for FY 2015-16, 2016-17 and FY 2017-18 and is carrying out normal business activities and has certain assets which necessitate restoration of its name in the record of ROC. In order to corroborate this submission the appellant has placed before us the following evidence:
 - i. Copy of Audited Balance Sheet which do not reflect revenue from operations except other non-operating income (rent income) amounting to Rs. 96000/- for the Financial years ending 31st March, 2018. The Financial



statement reflect current assets including cash & cash equivalents and fixed assets including tangible assets and current liabilities including short term borrowings and trade payables.

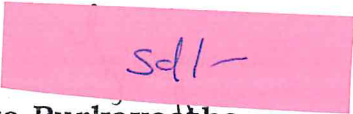
- ii. Copy of the IT Returns filed for the assessment year 2016-2017, 2017-2018 and 2018-2019.
- iii. Copy of Bank Statement issued by State Bank of India also placed on record showing operation in their account and a credit balance.

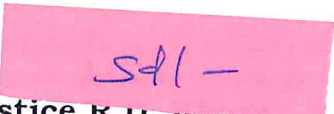
6. The provisions pertaining to restoration of the name of the company has been provided in Section 252 of the Companies Act, 2013 which includes that, if it is just and equitable to restore the name of the company in the Registrar of Companies, it may direct the RoC to restore the name in its Register.
7. The Appellant Company has been able to satisfy this Bench that it has certain assets which necessitate and justify restoration of its name in the Register of Companies. 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 financial statement 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 financial statement as that would be excessive or inappropriate penalty for that oversight.

8. Accordingly, the petition is allowed subject to payment of costs of Rs. 25,000/- to the Prime Minister Relief 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 Registrar of Companies (RoC), as if its name of the company had not been struck off.
9. 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 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.

The petition is disposed of accordingly.


Sumita Purkayastha
Member (T)


Justice R.D. Khare
Member (J)

Pronounced today under Rule 151 of the NCLT Rules 2016 as Hon'ble Member(J), Justice (Retd.) Rajesh Dayal Khare is not holding court today.

sd/-

(PRABHAT KUMAR SHARMA)

COURT OFFICER