

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, BENCH-IV
APPEAL No.436/252/ND/2020

(In the matter of Section 252(1) of the Companies Act, 2013)

In the matter of:

1. Sanjay Uppal
E-33, Sector-3,
Noida- 201301

...Appellant

Versus

1. Registrar of Companies
IFCI Tower, 4th Floor, 61, Nehru Place,
New Delhi-110019

...Respondent No. 1

2. Ahuja Exims Private Limited
B-381, Sarita Vihar
New Delhi-110044

...Respondent No. 2

3. Income Tax Office
Standing Counsel
CH-No. 485-486, Delhi High Court
New Delhi

...Respondent No. 3

4. Ashish Ahuja
Ex Director of Ahuja Exims Private Limited
B-381, Sarita Vihar
New Delhi-110044

...Respondent No. 4

5. Akash Ahuja
Ex Director of Ahuja Exims Private Limited
B-381, Sarita Vihar
New Delhi-110044

...Respondent No. 5

ORDER DELIVERED ON : 17.02.2022

CORAM:

JUSTICE RAMALINGAM SUDHAKAR, HON'BLE PRESIDENT
SHRI NARENDER KUMAR BHOLA, HON'BLE MEMBER (T)

Present:

For Appellant:- Adv Inderdeep Singh Ahluwalia for Appellant

For Respondent 2,4 & 5:- Partho Bhattacharya, Advocate

ORDER

PER:- NARENDER KUMAR BHOLA, MEMBER (T)

1. The present appeal has been filed under Section 252(3) of the Companies Act 2013 on behalf of Sh. Sanjay Uppal in the capacity of the creditor (for brevity herein after referred as 'Company') seeking restoration of the name of the company, which was struck off by the Registrar of Companies, NCT of Delhi and Haryana vide impugned order dated 29.10.2019.
2. The Respondent No.2, M/s. Ahuja Exims Private Limited is incorporated on 23.12.1998. The name of the Company was struck off from the Register of Companies under Section 248 of the Companies Act, 2013, by a suo moto action of the Respondent, after issuance of the notification under Section 248(5) in the Official Gazette dated 17.08.2019. The aforesaid action was taken on account of failure of the Company to file its statutory returns and other requisite documents giving rise to a reasonable belief that the company was not operational.
3. It is submitted that the appellant has sold import and export license to the respondent no. 2 i.e Ahuja Exims Private Limited against which commission of Rs. 3, 29,518 is overdue.
4. It is submitted that the appellant has also initiated Arbitration Proceedings against the Respondent No. 2 Company to recover its dues. The Arbitration proceedings were initiated prior to the date of Striking off and in order to enable the Appellant to recover its legitimate dues it is necessary to restore the name of the company.
5. The provision pertaining to restoration of the name of the company has been provided in Section 252 (3) of the Companies Act, 2013, which envisages that: -

“If a company, or any member or creditor or workman thereof feels aggrieved by the company having its name struck off from the register of companies, the Tribunal on

an application made by the company, member, creditor or workman before the expiry of twenty years from the publication in the Official Gazette of the notice under sub-section(5) of section 248 may, if satisfied that the company was, at the time of its name being struck off, carrying on business or in operation or otherwise it is just that the name of the company be restored to the register of companies, order the name of the company to be restored to the register of companies, and the Tribunal may, by the order, give such other directions and make such provisions as deemed just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off from the register of companies.”

6. Considering the provisions of 252(3) which enable the creditors to move an application before this Tribunal, to recover the amount which is due from the company under default the applicant has moved the present application.
7. The Registrar of Companies has filed their reply and they have clearly indicated that they don't have any record. Therefore, their participation is totally zero. It means they have no objection in allowing the appeal. Furthermore, the Respondent Company's Directors have also filed reply submitting their no objection regarding restoration of the name of the company.
8. As a sequel to the above said discussion, we are of the firm view that the appellant herein succeeded in proving that there are a proceeding pending regarding a claim against the company and admittedly for a valid arbitration proceedings, the name of the company should be restored. Accordingly, it is just and proper that the prayer of the Appellant be allowed. Therefore, the Public Notice of RoC striking off name of the respondent-company stands set-aside.
9. Henceforth, the Registrar of Companies is directed to restore the name of the respondent- Company in their Register. The name of

the respondent- Company shall then, as a consequence, stands restored to the Register of the Registrar of Companies, as if the name of the company had not been struck-off.

10. Resultantly, the present appeal stands allowed.

Let the copy of the order be served to the parties.
File be consigned to records.

-sd-

(RAMALINGAM SUDHAKAR)
PRESIDENT

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(NARENDER KUMAR BHOLA)
MEMBER (TECHNICAL)