

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT – IV
COMPANY APPEAL NO. 248/252/ND/2022**

SECTION 252(1) & (3) OF THE COMPANIES ACT, 2013

IN THE MATTER OF:

**JAI MATA DI WOODEN AND STEEL WORKS PRIVATE LIMITED
HAVING REGISTERED OFFICE AT:
234, SURYA NIKETAN, NEW DELHI-110092**

...APPELLANT COMPANY

VERSUS

**REGISTRAR OF COMPANIES,
NCT OF DELHI AND HARYANA
IFCI TOWER, 4TH FLOOR, 61,
NEHRU PLACE, NEW DELHI-110019**

...RESPONDENT

Order Delivered on: 30.11.2023

CORAM:

**SHRI MANNI SANKARIAH SHANMUGA SUNDARAM, HON'BLE MEMBER
(JUDICIAL)**

DR. SANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant	: Mr. Sarvik Singhai, Adv.
For the RoC	: Ms. Shankari Mishra, Advocate
For the Income Tax Dept.	: Mr. Gaurav Gupta, Sr. Standing Counsel with Mr. Puneet Singhal and Mr. Shivendra Singh, Jr. Standing Counsels

ORDER

PER: DR. SANJEEV RANJAN, MEMBER (TECHNICAL)

1. The present appeal has been filed by Appellant Company i.e., M/s Jai Mata Di Wooden and Steel Works Private Limited under 252(3) of the Companies Act, 2013 for restoration of name of the company, which was struck off by the Registrar of Companies, NCT of Delhi and Haryana (Respondent) vide

Public Notice ROC-DEL/248(5)/STK-7/2341 dated 20.04.2022 (subject company's name appears at Sr. No. 4527 in the impugned order).

2. Brief facts of the case, as mentioned in the instant company appeal, which are relevant to the issue in question, are as follows: -

- i. The Appellant submits that the Appellant Company i.e., M/s Jai Mata Di Wooden and Steel Works Private Limited was incorporated on 15.09.2006 as a private limited company under the Companies Act, 1956 bearing CIN: U20109DL2006PTC153838, having its registered office situated at 234, Surya Niketan, New Delhi-110092.
- ii. The Appellant Company was actively involved in the business of fabricators, producers, processors, makers, inventors, convertors, repairers, cleaners, assemblers, imports exporters, traders, buyers, sellers, retailers, suppliers etc.
- iii. That the Appellant Company is managed by two directors namely:

S.No	Name	DIN	Address
1.	Rekha Sharma	00317902	234, Surya Niketan, New Delhi-110092
2.	Anita Sharma	02953517	151, Saini Enclave, New Delhi-110092

- iv. It is submitted that the Appellant Company has been regular in past in preparing annual accounts and also holding its board meetings, general meetings of the shareholders as and when required, and maintained records, registers as required under the Companies Act, 2013 or erstwhile Companies Act, 1956. However, on account of unfavorable market conditions and difficulties the Company has not been able to generate any revenue since 2017.
- v. That the Appellant Company has Industrial land bearing Plot No. 47, Sector-31, Ecotech-I, Greater Noida, Distt. Gautam Budha

Nagar taken on lease from M/s Geeta Food Products and which is capable of generating revenue for the Appellant Company. A copy of the lease deed dated 22.04.2021 has been placed on record.

- vi. It is submitted that certain disputes arose between Late Ms. Manorma Shandilya, ex-Director cum shareholder of the Appellant Company wherein she had filed a FIR at PS Anand Vihar, a civil case before Civil Judge, senior division, Gautam Budh Nagar, and case before the NCLT. The Directors of the Appellant Company also filed a police complaint against Ms. Manorama Shandilya. All these disputes ultimately resulted in disruptions in working of the management due to which the statutory compliances under Companies Act, 2013 and other acts could not be complied with. Further, it is submitted that all the disputes were mutually settled between the parties vide a Memorandum of Understanding dated 17.01.2022.
- vii. That the Appellant Company maintained a current account with Union Bank of India for the financial year 2021-2022 in the name of the Company "Jai Mata Di Wooden and Steel Works Private Limited" to carry on day-to-day transactions effectively.
- viii. The Appellant Company submits the Latest Financial Statement stating the current operating position of the company as on 31st March, 2018 on the basis of the last audited Balance Sheet which is reproduced hereunder: -

PARTICULARS	AMOUNT (IN RS.).
<u>Source of Funds</u>	
<u>Shareholder's Capital</u>	
Share Capital	1,50,000.00
Reserves and Surplus	(2,25,176.26)
<u>Non Current Liabilities</u>	
Long Term Borrowings	58,90,378.00
Deferred Tax Liabilities	NIL
Other long term liabilities	NIL
<u>Current Liabilities & Provisions</u>	
Trade Payables	NIL
Other Current liabilities	10,500.00
TOTAL	60,25,701.74
<u>ASSETS:</u>	
<u>Non-Current Assets</u>	
Fixed Assets	56,63,543.67
Non-Current Investments	NIL
<u>Current Assets</u>	
Cash & Cash Equivalents	62,158.07
Short Term Loans and Advances	3,00,000
TOTAL	60,25,701.74

- ix. That the directors of the Appellant Company were regularly filing its annual return and balance sheet till the financial year ended 31st March, 2017 but was unable to file the annual return and balance sheet of the Appellant Company for the subsequent financial years on account of various issues accrued due to highly unfavorable market conditions.
- x. That the appellant company has filed its income tax return for the assessment year 2010-2011 which is placed on record.
- xi. That the Appellant Company submits that in the event of revival of the Company in the Register of Companies maintained by the Respondent, the Appellant Company shall file all outstanding statutory documents and returns.
- xii. That the Appellant Company has land leased in its name for carrying out the project as approved in the Transfer Memorandum issued by

GNIDA, business operations and the same reflects that the Appellant Company is in operation.

- xiii. That the Appellant Company admitted the default made by the Appellant Company for the non-filing of the documents with the Registrar of Companies and further submitted that it could not have an oversight for the filing and was complete negligence for non-filing of the financial on the part of the appellant company, due to which the Respondent was of an impression that the appellant company has been non-operative and has not be carrying its business or operation for a period of two immediate preceding financial years.
- xiv. The Appellant submitted that it has not previously filed any application, writ or suit regarding the present matter and no such application, writ or suit is pending before any forum.

3. The Tribunal vide order dated 13.06.2023 directed the appellant to issue notice to the Registrar of Companies and the Income Tax Department. Pursuant to notice, Registrar of Companies (Respondent) had appeared and filed its reply dated 24.07.2023 stated the reasons for action under section 248 of the Companies Act, 2013 which is extracted hereunder: -

Sr No.	Particulars	Remarks
1.	Revenue from Operations.	As per Profit & Loss A/c attached. F.Y. 2016-17: NIL

2.	Audited Financial Statement	Submitted with Petition for the Financial Year 2016-17
3.	Bank Statement	Submitted with Petition for the period 09.04.2021 – 25.05.2022
4.	Income Tax Return	Submitted with the petition for the A.Y. 2010-11

4. Further, it has been submitted that if application for restoration of name is considered, the applicant company be directed to file all pending annual returns and balance sheets of the subject company with the Registrar of Companies along with requisite additional fees as per law.
5. Vide order dated 30.11.2022 passed by this Tribunal, the appellant was directed to submit a tentative business development plan for the next five years in support of their appeal.
6. In compliance of order dated 30.11.2022 passed by this Tribunal, an affidavit dated 04.01.2023 has been filed by the appellant wherein the appellant company submitted a tentative business development plan for the next five years and also undertakes that the company will pay all the income tax dues if claimed by the Income Tax Department.
7. Vide order dated 30.05.2023 passed by this Tribunal, the appellant was directed to file the consent of other share-holders regarding revival of the company.

8. In compliance of order dated 30.05.2023, an affidavit dated 08.06.2023 has been filed wherein it is stated that the Director and the Shareholder of the Appellant Company have no objection whatsoever if the Appellant Company is revived by this Tribunal.
9. Heard. Record has been thoroughly perused. We observe that the Appellant in order to sustain their case, have placed reliance on the following documents: -
- a. Copy of Income Tax Returns Acknowledgment for the Assessment Year 2010-2011.
 - b. Copy of the bank statement for the period from 09.04.2021-25.05.2022.
 - c. Copy of audited financial statement for the Financial Year 2016-2017.
10. At this juncture, it will be advantageous to examine the requirement of Section 252(3) of the Companies Act, 2013 insofar as grant of relief to the appellant is concerned. The Section 252 (3) of the Act is reproduced below for better appreciation:

“252. Appeal to Tribunal. –

(1)

(2)

(3) If a company, or any member or creditor or workmen 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 workmen before the expiry of twenty years from the publication in the Official Gazette of the notice under subsection (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.”

11. A bare perusal of the aforesaid provisions shows that if company or any member or creditor feels aggrieved by the order of Registrar notifying a company as dissolved under section 248 of the Companies Act, 2013, they would be competent to file an application against the order of the ROC before the expiry of twenty years from the date of publication of striking off order in the Official Gazette. Sub-section 3 of Section 252 contemplates that one of the three conditions are required to be satisfied before exercising jurisdiction to restore company to its original name on the register of the ROC, namely:
- a) That the company at the time its name was struck off was carrying on business.
 - b) or it was in operation
 - c) or it otherwise just that the name of the company be restored on the register.
12. In connection with the non-filing of statutory records, it is pertinent to refer to the findings of Hon'ble High Court of Delhi in the matter of ***Mace Platronics Pvt Ltd Vs ROC, reported in (2010) 104 SCL 277 (Del)***, wherein it was held that:
- “When the name of the company was struck off after following the prescribed procedure for non-filing of statutory records, even though the contentions of the company that the officials entrusted with responsibility of filing documents had failed to do so cannot be accepted yet since the company was a running company and the application had been filed in time, the court had power to restore the name of the company.”*
13. Hence, upon considering the facts and circumstances of this present petition, which indicate that the company was carrying on its business at the time it was struck off, it would be just and fair to order restoration of the name of the Company in the Register of Companies maintained by the ROC.
14. Accordingly, this Petition is **allowed**. The restoration of the Company's name to the Register of Companies maintained by the ROC, is hereby ordered, subject to the following directions namely-

- a. The restoration of the Appellant Company's name i.e., Jai Mata Di Wooden and Steel Works Private Limited is subject to the payment of cost of Rs. 50,000/- (Rupees Fifty Thousand Only) to be paid to the Registrar of Companies, NCT of Delhi and Haryana. The name of the Appellant Company shall then, as a consequence, stand restored to the Register of the Registrar of Companies, as if the name of the company has not been struck off in accordance with Section 248(1) of the Companies Act, 2013.
- b. The Registrar of Companies, NCT of Delhi & Haryana (Respondent) is directed to restore the original status of the Appellant Company as if the name of the company has not been struck off from the Registrar of Companies with resultant and consequential actions like changing status of the company from 'struck off' to "Active".
- c. The Appellant Company is directed to file all pending statutory document(s) including Annual Returns and Balance Sheets in default along with prescribed fee/additional fee/fine as prescribed under the Companies Act, 2013 within 45 days from the date on which its name is restored on the Register of Companies by the ROC, NCT of Delhi and Haryana (Respondent). Consequently, thereupon the bank account/s if any subject to freeze shall get de-frozen and to be operated by the company.
- d. The Appellant Company is directed to submit a certified copy of this order to ROC, NCT of Delhi and Haryana within thirty days (30) of the receipt of this order.
- e. This order is confined to the violations, which ultimately leads to the impugned action of striking of the name of the Appellant Company, and it will not come in the way of Respondent to take appropriate action(s) in accordance with law, for any other violations/offences, if any, committed by the Appellant Company prior or during the striking off of the Appellant Company.

f. Resultantly, the present appeal i.e., **Company Appeal No. 248/252/ND/2022 stands allowed** with aforesaid terms.

Let the copy of the order be served to the parties.

File be consigned to records.

Sd/-

**DR. SANJEEV RANJAN
MEMBER (TECHNICAL)**

Sd/-

**MANNI SANKARIAH SHANMUGA SUNDARAM
MEMBER (JUDICIAL)**