

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, BENCH - VI
APPEAL NO. 42/252/ND/2023

IN THE MATTER OF:

**SH. SURINDER WADHWA
S/O LT. SH. D.C. WADHWA
R/O W-26, GREATER KAILASH-II,
SOUTH DELHI, NEW DELHI-110048**

... APPELLANT

VERSUS

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

...RESPONDENT NO.1

AND

**INCOME TAX DEPARTMENT
ROOM NO. 429, OLD BLOCK
4TH FLOOR, CHAMBER NO. 1
HIGH COURT OF DELHI
NEW DELHI**

...RESPONDENT NO. 2

CORAM:

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

APPEARANCES

For the Appellant:

Adv. Abhishek Aggarwal, Adv. Aayush
Aggarwal & Adv. Chahat Aggarwal
Adv Aakash Sharma

For the RoC:

ORDER

PER: RAHUL BHATNAGAR, MEMBER (TECHNICAL)

ORDER DELIVERED ON – 25.07.2024

1. The present appeal has been filed in accordance with section 252(1) of the Companies Act read with Rule 87A of the National Company Law Tribunal (Amendment) Rules, 2017 by SURINDER WADHWA, a Director/Shareholder of **M/s BLUE ICE FARMS PRIVATE LIMITED (DIN – 00484002)**, in relation to an order of striking off the name of the respondent company passed by the Respondent RoC with effect from 31.01.2022 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. Notice was issued to the Income Tax Department and RoC by the virtue of an order dated 20.02.2023 to file their respective appearances and replies. Counsel for RoC has appeared and filed its report dated 19.04.2023 before this Tribunal. Further, the IT department also filed its report dated 28.07.2023.
3. **The appellant has made the following averments in their petition -**
 - a. Learned counsel for the Appellant represents that the Company was incorporated under the provisions of Companies Act, 1956 on 25.10.2012 and has its registered office at: R/O W-26, GREATER KAILASH-II, SOUTH DELHI, NEW DELHI-110048 which falls within the jurisdiction of this Tribunal (New Delhi Bench) and also RoC, NCT of Delhi & Haryana.
 - b. That the appellant i.e. SURINDER WADHWA, in the present case is a director of **M/s BLUE ICE FARMS PRIVATE LIMITED (DIN – 00484002)**.
 - c. The Authorized Capital of the Company is Rs. 5,00,000/-. The Paid-up Capital of the company was Rs. 1,00,000/- as per Master Data of the company.
 - d. In compliance to the aforesaid direction issued by this Tribunal, the appellant has filed an affidavit stating that the Company i.e. M/s Blue ice Farms Private Limited holds a land situated at W-26, Third Floor, Greater

Kailash, Part-2, New Delhi-110048 which is located in New Delhi. It is contended that the company's major business was to purchase, acquire, take on lease, rent, let out on hire, build, construct, execute, carry out, equip, improve, work, develop, administer manage, maintain, enlarge, pull down, remove, replace, rebuild, in India and/or elsewhere, work and conveniences of all kinds which expression includes, among other things roads, railways sidings, jetties, piers, wharfs, bridges, canteens, warehouses, stores, buildings, office and/or residence, places of recreation and to pay for survey, preliminary or otherwise and for experiments, etc.

- e. That the Company is a closely held Private Limited Company and has two (4) Directors.
- f. The appellant through an instant appeal is hereby enclosing the Annual Accounts of the Company filed before Income tax Department for the accounting /financial year 2016 - 17, 2017 - 18, 2018 - 19, 2019 - 20 and which shows that the Company is operationally maintaining active status since incorporation and has been doing the business activities.
- g. The company was maintaining all its day to day affairs peacefully until the internal dispute between the management occurred, leaving company into several/numerous/voluminous litigations before different forums/courts/tribunal, etc. It is pertinent to mention herein that the appellant by way of the present petition wants to safeguard the company's right to litigate/Sue and plead for justice whensoever required.
- h. It is further mentioned that the Company purchased an agricultural land in the year 2013 admeasuring 5 Bighas and 13 Biswas at 417/1/1 (1-4), 415/1 (4-9) situated in Village Gadaipur, Tehsil Mehrauli (Hauz Khas), New Delhi.

- i. That there was no malicious intention on the part of the Company and the delay was truly inadvertent and unintentional.
 - j. The Appellant has prayed to allow the present restoration appeal of the company herein namely M/s Blue Ice Farms Private Limited with such directions as deemed fit by this Tribunal in the interest of justice.
4. **The respondent/s, i.e. the RoC and the Income Tax Department have made the following submissions in their reply to the petition under section 252 of the Companies Act, 2013 for restoration of name of the petitioner company**

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- a. That as per available records on MCA 21 Portal, the Petitioner is the shareholder of the/ Ex-Director of the company i.e. M/S BLUE ICE FARMS PVT. LTD. Having CIN U70109DL2012PTC243991, which was incorporated on 25.10.2012 under the provisions of the Companies Act, 1956. The Registered office of the Company was situated at W-26. Third Floor, Greater Kailash Part 2, New Delhi, South Delhi, Delhi, 110048, India. The Authorized Capital of the company was Rs. 500000/-. The Paid up Capital of the company was Rs. 100000/-.
- b. That the company was incorporated on 25.10.2012 and the last Annual Return and Balance Sheet submitted by the company to this office, before it was considered to be struck off, pertain to the financial year that ended on 31.03.2016 and 31.03.2015 respectively. 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 office of 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.

- c. That office of RoC issued the notice in the form of STK - 1 on 31.12.2021 intimating the company and the directors of the company at their registered office about the aforesaid defaults, providing them a fair opportunity to respond. Subsequently, this office also issued public notice for the same in the form of STK-5 dated 31.01.2022. Thereafter, the name of the company was struck off as per the provision of Section 248(1)(c) of the Companies Act, 2013 read w/th 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 20.04.2022.
- d. That it has been stated by the appellant in his petition that the appellant has filed a petition under section 241 and 242 of the Companies Act, 2013 against the current management of the company bearing CP No. 122/2017 and the same is yet to be disposed.
- e. That the Respondent states that the action of striking off of the present Company was legal and justified, as the company was not carrying on any operations for a period of two immediately preceding financial years (as indicated by non-filing of the financial statements of the Company for two or more years).
- f. Section 560(5) of the Companies Act, 1956 is reproduced herein for the sake of brevity -

560. Power of Registrar to strike defunct company off register

(5)At the expiry of the time mentioned in the notice referred to in sub-section (3) or (4), the Registrar may, unless cause to the contrary is previously shown by the company, strike its name off the register, and shall publish notice thereof in the Official Gazette;

and on the publication in the Official Gazette of this notice, the company shall stand dissolved: Provided that-

A. the liability, if any, of every Director, [* * *] manager or other officer who was exercising any power of management, and of every member of the company, shall continue and may be enforced as if the company had not been dissolved; and

B. nothing in this sub-section shall affect the power of the [Tribunal] [*Substituted by Act 11 of 2003, Section 114, for " Court".*] to wind-up a company the name of which has been struck off the register.

g. 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 MGT Form 7 submitted with the petition F.Y. 2015-16 showing Revenue as NIL
2.	AUDITED FINANCIAL STATEMENTS	NOT SUBMITTED WITH THE PETITION
3.	BANK STATEMENT	NOT SUBMITTED WITH THE PETITION
4.	INCOME TAX RETURN	NOT SUBMITTED WITH THE PETITION

5. The submission/s of the income tax department have been surmised as under –

a. That, as per Income Tax Business Application (ITBA) 360-degree System, the details reflected in the past Income Tax Returns filed by the Company are as follows –

Assessment Year	Date of filing of ITR	Income/ Loss Returned
2013-14	26-09-2013	0
2014-15	29-09-2014	0
2015-16	26-09-2015	0
2016-17	28-09-2016	0

- b. That, details of scrutiny assessment against the Company are as follows - As per system, no scrutiny assessment has been made against the assessee.
- c. That, details of proceedings pending against the Company are as follows - As per system, no scrutiny assessment is pending against the assessee.
- d. That, details of demands outstanding against the Company are as follows - As per system, no outstanding demand is pending against the assessee.

ANALYSIS AND FINDINGS

6. We have carefully considered the plea of the Appellant and the representations of RoC and the Income Tax Department. It is evident from the plea of the Appellant that it admits the default with regards to the compliances of the company. However, the Appellant is seeking restoration of the company's name in the register as maintained by RoC relying on the ground that owing to voluminous litigation that is pending against the management of the company (such as the Section 241-241 case pending against the company) the company was not able to discharge its statutory obligations.
7. It can be deduced from the evidence placed on record that the affairs of the company have been in a disarray owing to the pending litigation against the management of the company. However, the aforesaid litigation cannot be

deemed to be a ground for the gross negligence in complying with the statutory requirements. Moreover, the company should have been more careful while with regard to the said compliances.

8. However, in light of the fact that the Appellant, through the company is now willing to rectify the omission instantly with abundant precaution as to all statutory compliances in the future and 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 **just and equitable** that the name of the Company should be restored on the register of companies as maintained by the Respondent RoC.

9. 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".

10. 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.

11. Accordingly, **the appeal is allowed**, subject to payment of costs of INR 50,000/- to be borne by the appellants payable to the Registrar of Companies.

12. 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.
13. The direction for freezing the bank account(s) of the 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 company.
14. 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)