

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
Appeal No.05/252/ND/2020

IN THE MATTER OF:

RAJINDER KUMAR MEHTA & ORS.
s/O Roshan Lal Mehta
At D-23, Sector-52, Noida,
Gautam Buddha Nagar,
Uttar Pradesh-201301

...Appellant 1/Appellant Company

SANTOSH MEHTA
D/o Kishan Lal Mehta
R/o Lal Hospital Wali Gali,
Jagadhri Bila, Yamuna Nagar,
Haryana-135102

...Appellant 2

MEERA MEHTA
D/o Virender Kumar
R/o D-23, Sector-52,
Noida, Gautam Budha Nagar,
Uttar Pradesh-201301

...Appellant 3

VERSUS

THE REGISTRAR OF COMPANIES
4th Floor, IFCI Towers,
Nehru Place, New Delhi - 110019

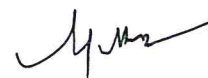
...Respondent

Order Delivered on:12.02.2020

CORAM:

SHRI ABNI RANJAN KUMAR SINHA, MEMBER(JUDICIAL)

DR. V. K. SUBBURAJ, MEMBER (TECHNICAL)



PRESENT-Mr. Prince Mohan Sinha, Authroized Representative
Ms. Sweety Khattar Kumar, AROC

ORDER

Per Dr. V. K. Subburaj (Member Technical)

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 08.08.2018 under the provisions of Section 248 of the Companies Act, 2013. Learned authorized representative for the Appellant represents that the Appellant Company was incorporated under the provisions of Companies Act, 1956 and has its registered office at J-2/118, DDA Flats, Kalkaji, New Delhi-110019. The Company is engaged in the business of Software Development. Learned authorized representative 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.
2. Upon notice to the Registrar of Companies ("RoC"), the RoC has filed its affidavit on 23.01.2020 and pleaded that the company may kindly



be directed to prove that it was carrying may kindly be directed to prove that it was carrying on business or was in operation and that it is just that the name of the company be restored to the register. However, the Ld. AROC for the RoC appeared and conveyed RoC's no objections to restoration of the Appellant Company subject to terms. Counsel for the Income Tax Department filed the report on 30.01.2020 and conveyed the No Objection for revival of the company.

3. We have considered the plea of the Appellant and the representations of RoC and Income Tax Department. It is evident from the plea of the Appellant that it admits the default and doesn't question 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 possession of an immovable property 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. Acknowledgement for filing Income Tax Returns for the years 2013-14 to 2016-17 with details of payment of TDS particulars.

 3

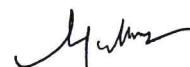
- ii. True Copies of Financial Statements and Balance Sheet for the Financial Years 2015-16 to 2017-18 with details of turnover of Rs. 39,96,468/- and profit of Rs. 8,20,454/- as on 31.03.2018. The company also has a total reserve and surplus of Rs. 30,59,331/-.
 - iii. GST Certificate and all GST Returns filed during the year 2019-2020.
 - iv. Copy of the bank statement of the appellant company issued by the ICICI Bank for the period from 08.10.2017 to 07.10.2019 with substantial day today transactions.
 - v. Copy of the sale deed of the property owned by the company (Plot No.23, Block E, Sector 63, Phase-III) in the layout plan of Noida, District Gautam Budh Nagar, U.P.
4. 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. 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.

5. Accordingly, the appeal is allowed subject to payment of costs of Rs. 25,000/- to the Prime Minister Relief Fund and Rs. 25,000/- to the Ministry of Corporate Affairs. 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.

6. 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.



7. The appeal is allowed accordingly. Let the copy of the order be served to the parties.

-sd-

(DR. V. K. SUBBURAJ)
MEMBER (TECHNICAL)

-sd-

12.02.2020

(ABNI RANJAN KUMAR SINHA)
MEMBER (JUDICIAL)

Deepak