

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
Court-VI
NEW DELHI

Appeal No.42/252/ND/2020

IN THE MATTER OF:

Vinayak Jain and Ors

(In Matter of Niva Rubber Private Limited)

i. Vinayak Jain

S/O Mr. Vinod Kumar Jain

D.O.B: 03.11.1976.

Address: C-29, Sector-14 Noida 201301.

ii. Manju Jain

D/O Mr. Vasudev Jain

D.O.B: 10.12.1950.

Address: C-29, Sector-14 Noida 201301.

iii. Himanshu Kumar Patnaik

S/O Mr. Satya Narayan Patnaik

D.O.B: 30.12.1965.

Address: C-15, Sector-14 Noida 201301.

.....Appellants

VERSUS

THE REGISTRAR OF COMPANIES

...Respondent

Appeal No.42/252/ND/2020

1



CORAM:

MR. P.S.N PRASAD, MEMBER (JUDICIAL)

DR. VK SUBBURAJ, MEMBER (TECHNICAL)

For the Petitioner: Mr.Prince Mohan Sinha, Advocate.

For the Respondent: Mr. Yadubhushan Rao, AROC.

ORDER DELIVERED ON: 07.09.2020

ORDER

P.S.N PRASAD, HON'BLE MEMBER (Judicial)

1. The erstwhile director of Niva Rubber Private Limited bearing CIN No.: U74899DL1986PTC023314 have filed the present appeal, invoking the provision of section 252 of the Companies Act, 2013 for restoration of the name of the petitioner company in the register maintained by the Registrar of Companies, NCT of Delhi and Haryana.
2. As per the averments, by Niva Rubber Private Limited, it was incorporated on 12.02.1986 having its registered office at C-18 East End Apartment Delhi DL, Delhi, within the jurisdiction of this Tribunal. The main object of Company is of the business of Manufacture and Trading of Rubber and Related Goods.
3. It is submitted by the appellant that a sweeping action was initiated by the ROC at the instance of MCA in striking of the names of several Companies who had

failed to file their Statutory Returns. The appellant has last filed its Annual Returns and balance sheet till 31.03.2015, thereby giving rise to the surmise that the business of the company was not in operation. Consequently its name was struck off by the Respondent from the Register of Companies under Section 248 of the Companies Act, 2013, upon taking steps in accordance with law and issuing a notification in the Official Gazette. The name of the effected companies was posted on its website.

4. The appellant company admits its default in carrying out the statutory compliances, but submits that the same was due to inadvertence reason. The copies of the audited Balance Sheets for the previous financial years have been placed on record to show that the business of the company was in operation.

5. In order to sustain the said plea, the petitioner has placed before us the following evidence:

- i. Copy of the Statement of Account with Kotak Mahindra Bank from 07.02.2017 to 11.10.2019 which reflect day to day transactions.
- ii. Copies of the duly Audited Financial Statements for the Financial Year 31.03.2016 to 31.03.2018.



- iii. A copy of Agreement to sell dated 23.04.2010 to transfer the title to the property situated at Sector-02, Greater Noida in the favour of appellant.
- iv. Copy of the GST Certificate and the GST Returns slip.
- v. Copy of Income Tax Return for the year 2016-17 and 2017-18.

6. The provisions pertaining to restoration of the name of the company has been provided in Section 252 of the Companies Act, 2013 and the same envisages that if the Tribunal is of the opinion that the removal of the name of the company from the register of the companies is not justified in view of the absence of any of the grounds on which the order was passed by the Registrar, it may order restoration of the name of the company in the register of companies. Further, restoration may also be directed by the Tribunal if it is just and equitable to restore the name of the company in the Register of Companies.

7. On perusal of the documents referred to in paragraph 5 above, a reasonable presumption can be inferred that the company was active before being struck off from the register. The assumption of ROC that the company was not in operation was founded merely on grounds of non-filing of the Statutory Returns. The Act itself provides for redressal of these defaults.

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 Court 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.

8. Accordingly, the appeal is allowed subject to payment of costs of Rs. 25,000/- to the Prime Minister Relief Fund. The restoration of the petitioner 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 petitioner company shall then stand restored in the Register of the Registrar of Companies, as if the name of the company had not been struck off in accordance with Section 248(5) of the Companies Act, 2013 with all consequential effects and benefits.

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 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.

10. The petition is disposed of accordingly.

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

- Sd -

(DR. V.K.SUBBURAJ)

MEMBER (TECHNICAL)

- Sd -

(P.S.N PRASAD)

MEMBER (JUDICIAL)