

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
BENCH - VI
Appeal No.529/252/ND/2018

IN THE MATTER OF:

M/S PARAGON SECURITIES PRIVATE LIMITED
Registered Office:
A-4/14, New Kondli,
East Delhi, New Delhi- 110096

...Appellant

VERSUS

1. THE REGISTRAR OF COMPANIES
NCT of Delhi & Haryana,
IFCI Tower, 4th Floor,
61, Nehru Place, New Delhi - 110019

...Respondent No. 1

2. UNION OF INDIA
Ministry of Finance, Department of Revenue,
Through Department of Income Tax,
C/o Principal Chief Commissioner of Income Tax,
I.P. Estate, New Delhi - 110001

...Respondent No. 2

Order Delivered on: .09.2019

CORAM:

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

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

PRESENT- Nikhil Kumar, Kamna, Advocate for the Applicant

M. Yadubhushana Rao, AROC for the Respondent No. 1
Easha Kadian, Mrs. Lakshmi Gurung, Standing Counsel for
Income Tax Department for the Respondent No. 2

ORDER

Per (Dr.) P.S.N. Prasad (Member Judicial)

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 No. 1 with effect from 30.06.2017 under the provisions of Section 248 of the Companies Act, 2013. Learned counsel for the Appellant represents that the Appellant Company was incorporated under the provisions of Companies Act, 1956 on 08.11.1995 and has its registered office at A-4/14, New Kondli, East Delhi, New Delhi-110096. The Company is engaged in the business to carry on the activities and business in Human Resource Consulting which include Executive Recruitment and Selection, manpower placements, skill profiling, outplacements and manpower relocation, temporary appointments, business process outsourcing, etc. Learned counsel 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 20.08.2018 and pleaded that it has no objections for restoration but the company 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. The Income Tax Department has filed its report on 18.05.2018 according to which the company has no dues.

3. We have considered the plea of the Appellant and the representations of RoC and Income Tax Dept. It is evident from the plea of the Appellant that it admits the default and questions 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 active business and various business proposals are at finalizing stage 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 to enable the appellant to

continue its business. In order to sustain the said plea, the Appellant has placed before us the following documents:

- i. True Copies of Financial Statements and Balance Sheet for the Financial Years 2010-11 to 2016-17 with details of Long Term Borrowings of Rs. 2,223,154/- for the year ending 2017, cash and cash equivalents of Rs. 260,358/-, tangible assets of Rs. 2,348, 056/- as on 31.03.2017.
 - ii. Copy of Transfer Deed of Lease Hold Rights dated 28.08.2001.
 - iii. Copy of Bill cum Challan for water charges for the period 01.04.2017 to 31.03.2018.
 - iv. Bank statement issued by M/S Citizen Co-operative Bank, Aasirwad Complex, Vill- Giihore, Sector 53 branch of Noida for the period 01.04.2014 to 04.04.2018 showing that the Appellants have bank balance of Rs. 72,942/-.
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. 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 disposed of accordingly.

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

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(DR. V.K. SUBBURAJ)

Member (Technical)

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((Dr.) P.S.N.PRASAD)

Member (Judicial)