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IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
Appeal No.1145/ND/252/2018

IN THE MATTER OF:

**Ishwar Sindhi Dass
S/o Shri Govind Ram,
R/o Ward No.22 Sindhi Mohalla,
Hanumangarh Town,
Rajasthan-335512**

...Appellant No.1

**Bal Kishan,
S/o Shri Govind Ram,
R/o Ward No.22 Sindhi Mohalla,
Hanumangarh Town,
Rajasthan-335512
(In the matter of
Somani Agro Private Limited)**

... Appellant No.2

VERSUS

**THE REGISTRAR OF COMPANIES,
Ministry of Corporate Affairs
New Delhi & Haryana**

...Respondent

Order Delivered on: 21.08.2019

CORAM:

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

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

PRESENT- Mr. Sanjay Khandelwal, PCS of the Appellant Company.
Mr. M. Yadubhushana Rao, AROC.
Mr. Puneet Rai, Standing Counsel for IT Dept.



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 with effect from 30.06.2017 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 565, Shardhanand Market, New Delhi- 110006. The Company is engaged in the business of dealing in Agro Products. 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 15.02.2019 and stated that the company has been



struck off from the register of the companies in terms of provisions of Section 248(5) of the Companies Act, 2013 vide notice dated STK-7 dated 07.06.2017. ROC has also submitted that the present company was struck off by ROC because neither the company was carrying on any operation for the period of two immediately preceding financial years nor had obtained status of a Dormant Company under Section 455 of the Companies Act.

3. We have considered the plea of the Appellant and the representations of RoC. 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 possession of 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. Copies of acknowledgement receipts of ITR-6 filed by the Company for the years 2013-14 to 2016-17.



- ii. Copy of the audited balance sheets for the financial year ending 2013-14 to 2016-17 with details of tangible assets to an extent of Rs.2,37,088/- as on 31st March, 2017 including agricultural land.
- iii. Copy of the sale deed for agricultural land of 1.202 hectare in favour of the Director of the Company in Hanumangarh district of Rajasthan.

4. On 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 in the eye of law. 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. The notice was also issued to the Income-Tax Department for filing of reply in the matter in response of the said notice to the ITO Ward No.2 has informed that no demand is pending against the Appellant and also stated that they have no objections to the revival of the company.
6. The Company owns substantial assets and has extensive business potential and intends to carry out the business in future. The act of the striking shall jeopardize the economic interest of the company and its share-holders. The Company has also stated in the appeal that there are no proceedings under Section 210 and 229 of the Companies Act pending against the company and no proceedings against 241 and 242 of the Companies Act, 2013 have been instituted against the company.
7. Having regard to the above the appeal is allowed subject to payment of costs of Rs. 25,000/- (Rupees Twenty Five Thousand only) 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.

8. 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.
9. The petition is disposed of accordingly.
10. 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)

Harleen Kaur