

**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ**

Appeal No.05/ALD/2023

*An application under Section 252 (1) of the Companies Act, 2013
read with Companies Rules, 2016.*

IN THE MATTER OF:

Abhiraj Business Enterprises Pvt. Ltd

Having its Registered office at

F-35, Site No. 5, Udhyog Kunj, Panki, Kanpur Nagar, U.P.

.....Appellant

Versus

REGISTRAR OF COMPANIES,

KANPUR, UTTAR PRADESH

Having office at

37/17, Westcott Building, The Mall, Kanpur, UP-208001

.....Respondent

ORDER PRONOUNCED ON 14th May, 2024

Coram:

Mr. Praveen Gupta. : Member (Judicial)

Mr. Ashish Verma : Member (Technical)

Appearances:

Sh. Vipin Kumar Kushwaha, Adv : *For the Appellant*

Sh. Krishna Dev Vyas, Adv. : *For the ROC*

Sh. Gaurav Mahajan, Sr.S.C. : *For the IT Department*

Appeal No.05/ALD/2023

IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ

Page 1 of 12

-Sd-

-Sd-

ORDER

- 1.** This appeal has been filed on 25.1.2023 U/s 252(3) of the Companies Act, 2013 by Mr. Arun Kumar Sharma & Anr. (hereinafter referred as the Appellants) on behalf of M/s Abhiraj Business Enterprises Pvt. Ltd. (hereinafter referred as the Appellant Company) against the order of Registrar of Companies, Uttar Pradesh, Kanpur (hereinafter referred as the Respondent/ROC) passed, vide order dated 23.11.2022 in STK 7 striking off the Appellant Company from the Register of Companies from the date of publication of this order and the said company is also dissolved due to not filing of Form 20A informing about subscription of share capital and starting of the business and then making a prayer for restoring the name of the company in the Register of Companies. Later a supplementary affidavit was filed on 15.8.2023 to treat the present petition u/s 252(1) instead of 252(3).
- 2.** As averred in the appeal documents that the Appellant Company was incorporated on 31.1.2020 having CIN No. U29309UP2020PTC126447 and the registered office at F-35, Site No. 5, Udhyog Kunj, Panki, Kanpur Nagar, U.P. with

authorized share capital of Rs. 15,00,000/- divided into 15000 equity shares of Rs. 100 each of which subscribed and paid-up share capital is Rs. 1,00,000/- divided into 1000 equity shares of Rs.100 each. The Appellant Company has two directors and shareholders Mr. Arun Kumar (DIN: 08686009) and Mr. Sanjay Kumar (DIN: 08686008) holding 500 shares each.

3. As per the memorandum of association of the Appellant Company the main object for the operation of the Company, is manufacturing and trading of automobile and machinery parts, supplying of equipment and components and material trading. It is contended by the Appellant Company in the appeal document that that they had been regularly involved in carrying on the business since its incorporation as per the provisions of the Companies Act, 2013 but after incorporation of the Company they could not start their business operations immediately due to spread of Covid-19 Pandemic which halted the business operations. However, the Board of directors opened a bank account in Bank of India, Kanpur- 208022 wherein a Start-up current account

bearing A/c no. 695920110000609 has been opened and is in operation and obtained GST registration as well.

4. It is averred that due to the ongoing COVID 19 pandemic the Appellant Company failed to file Form INC- 20A required to be filed with ROC informing about subscription of share capital and starting of the business which led to its name being struck off. Thus, it has been demonstrated that the Appellant Company is actively involved in running of the business. However, due to the extraordinary circumstances Form 20A along with Annual Return and Balance Sheet since incorporation, ADT-1, MGT-7A and AOC-4 etc could not be filed with the office of ROC resulting into striking off the Appellant Company from the Register of Companies maintained in the office of ROC. Now, the Appellant Company has pleaded to be willing to file Form 20A and up to date annual returns and Balance Sheet etc. till 2022 as may be required under the provisions of the Companies Act, 2013 with all requisite fees along with the additional fees as provided in the Companies Act, 2013 to the Registrar of Companies immediately, once the name of Appellant Company is restored on the Register of Companies

maintained by the Registrar of Companies, Uttar Pradesh, Kanpur on its MCA portal. Therefore, prayer has been made in the appeal to pass an order for restoration of the name of the Appellant Company i.e. **“M/s Abhiraj Business Enterprises Private Limited”** in the Register of Companies maintained by the office of ROC, Uttar Pradesh, Kanpur at Kanpur, so that necessary statutory compliances as per the Companies Act, 2013 can be made.

5. We have found that the company’s name was struck off on 23.11.2022 and this appeal is filed on 25.1.2023 , hence, the same is filed within the statutory time limit of three years and accordingly, this appeal is found to be maintainable, therefore, notice has been issued to the ROC Uttar Pradesh, Kanpur as well as to the concerned Assessing Officer of the Income Tax Department through the Nodal Officer Principal Chief Commissioner of Income Tax, Lucknow calling for their reply/report on restoring of the name of the Appellant Company in the Register of Companies maintained by the ROC, Uttar Pradesh, Kanpur to satisfy ourselves whether such restoration of the name of the Appellant Company is in the interest of justice and in public interest after ascertaining

that the ground on which the order was passed by the Registrar of Companies is justified or not.

6. In its report filed by the ROC, Uttar Pradesh, Kanpur vide its report filed before us on 30.4.2023, the ROC has justified striking off the name of the Appellant Company stating that the company has not filed its statutory documents i.e. Balance sheet and annual returns since incorporation in contravention to Section(s) 92/137 of the Companies Act 2013 respectively. Despite being given fair opportunity of being heard by way of show cause notice, the Company and its directors failed in fulfilling their mandatory duty of filing the statutory returns of the Company. However, the Respondent states that the matter may be decided on merits subject to assurance of the company to comply with all the pending requirements under the Act. Therefore, we find that the ROC is not averse to the prayer of the Appellant Company for restoring of its name provided the statutory compliances are made by them after paying requisite fees/fines. In this regard, the Appellant-Company has also filed an affidavit that any penalty required to be paid by the company for non-

compliance in filing of Form 20A and any other statutory compliance, would be paid as per law.

7. The Income Tax Department in its report filed on 20.7.2023 has reported that the Appellant Company was in existence for almost 34 months i.e. during the last 2 months of F/Y 2019- 20 1. OF IN12 months of F/Y - 2020-21, 12 months of F/Y-2021-22 and 8 months of F/Y-2022-23 relevant to the A/Y's 2020-21, 2021-22, 2022-23 and 2023-24 but the statutory compliance required to be made under Section 10-A of the Companies Act had not been made within 180 days along with other non-compliances. The ITBA portal reflects that the Appellant Company has filed ITR 6 for AY 2020-21 to 2022-23. There are neither outstanding demands nor any assessment proceedings pending against the Company. Furthermore, the petition does not contain the director's report for the relevant assessment year, which could demonstrate the Company's financial position and future prospects. It is further stated in the report of the Income Tax Department that in case, the name of the company is restored, the same should be subject to the necessary

compliance of Income Tax Law to be made by the Appellant Company.

8. During the hearing, the Ld. Counsel representing the Appellant Company informed that the share subscription money has been deposited though not within stipulated time period. Vide supplementary affidavit dated 2.1.2024 it was submitted that due to the COVID 19 pandemic and financial difficulty, the Company could not open its bank account within 180 days as per Sec 10 A of the Companies Act, 2013 and therefore could not deposit the subscriber amount and it is only with regards to the non-compliance in respect of filing of the Form 20A due to which the Company has been struck off. In another supplementary affidavit filed on 13.3.2024 the Appellant Company clarified that the subscribers have deposited their amount on different dates in different amounts due to financial difficulty and hardship which is why the subscription amount has not been submitted in one time. Another clarification regarding the amount of subscription was submitted via supplementary affidavit dated 9.5.2024 wherein it was stated that the figure which was shown as Rs. 1000/- in the Balance sheet of the

year ending 31.3.2022 is actually Rs. 1,00,000/- and the same has been taken on record.

- 9.** The Appellant filed a rejoinder affidavit on 30.10.2023 in response to the ROC report wherein it is submitted that the Appellant Company was not required to file any balance sheet and annual return under Sec 137 and 92 of the Companies Act, 2013 respectively before January 2023. The Company did not receive any communication regarding its status being getting struck off through any means the and therefore no opportunity of being heard was being provided to the company or its directors. Moreover, only one e-form INC 20A as required under Section 10A(1)(a) of the Companies Act, 2013 and Rule 23A of the Companies (Incorporation) Rules, 2014 was inadvertently missed to be filed by the company due to incomplete professional advice.
- 10.** Considering the facts and circumstances of the case as discussed in foregoing paras, we allow the instant appeal to the extent of directing the ROC, Uttar Pradesh, Kanpur to restore the name of the Appellant Company on the Register of Companies in the same position as nearly as may be as if the name of the company had not been struck off from the

Register of Companies, changing the status of the Appellant Company from “**struck off**” to “**active**” and take such further action against the Appellant Company in accordance with the statutory provisions.

- 11.** Taking into account the report of the ROC as discussed in para 10, the restoration of the Company’s name will be subject to the payment of the cost of Rs. 25,000/- through online payment in *www.mca.gov.in* under the head “*miscellaneous fees*” by mentioning particular as “*Payment of cost for restoration of the company pursuant to orders in Company Appeal No.05/ALD/2023*” and also to make payment of Rs. 25,000/- to the Prime Minister National Relief Fund.
- 12.** This Appeal is disposed of on the terms directed above. The ROC shall give effect to this order only after perusal of the compliance report of the cost imposed. After due compliance with the above directions, the ROC, Uttar Pradesh, Kanpur shall publish the order for restoration of the name of the company in the Official Gazette under its office name and seal. The Appellant Company is directed to file all the statutory documents including Form 20A, Annual Accounts

and Annual Returns along with the prescribed fees and additional fees as ordered by the ROC, Uttar Pradesh, Kanpur as applicable under the Companies Act, 2013 within 45 days from the date on which its name is restored on the Register of Companies maintained by the Registrar of Companies, Uttar Pradesh, Kanpur. They shall also fulfill all the other relevant statutory compliances, such as under the Companies Act, 2013 and the Income Tax Act, 1961, etc. The Appellant Company shall also pay the outstanding income tax demand of Rs.7680/- as reported by the Income Tax Department. This order is confined to the violations, which ultimately led to the impugned action of striking off the name of the company, and it will not come in the way of the Registrar of the Companies, Uttar Pradesh or any other concerned Government Authority to take appropriate action(s) in accordance with law, for any other violations/offences, if any, committed by the Appellant Company prior to or during the period the name of the Company remained struck off.

- 13.** The Registry is directed to send copies of the order through email forthwith to all the parties in the matter.

14. The appellant company is directed to deliver a certified copy of this order to ROC, Uttar Pradesh, Kanpur within 30 days of the receipt of the order.
15. Certified copy of the order be issued upon making an application by any concerned party with all requisite formalities.
16. Company Appeal No.05/ALD/2023 stands disposed off accordingly.

-Sd-

(Ashish Verma)
Member (Technical)

-Sd-

(Praveen Gupta)
Member (Judicial)

Date: 14th May, 2024