

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

Appeal No.33/ALD/2023

(Application under Section 252(1) of the Companies Act, 2013).

IN THE MATTER OF:

JAK Traders Pvt. Ltd.

Having its Regd. Office at:
3/204, Vishnupuri, Kanpur,
Uttar Pradesh- 208002.

.....APPELLANT/PETITIONER

Versus

THE REGISTRAR OF COMPANIES, KANPUR, U.P.

37/17, WESTCOTT BUIDLING
THE MALL, KANPUR-208001, U.P.

.....RESPONDENT

Order pronounced on: 12th July 2024

Coram:

Mr. Praveen Gupta. : Member (Judicial)

Mr. Ashish Verma : Member (Technical)

Appearances:

Sh. Daljeet Dhiman, Adv. : *For the Appellant*

Sh. Shivendra Bahadur Singh, CGSC : *For the ROC, Kanpur*

Sh. Ankur Srivastava, Proxy for
Sh. Gaurav Mahajan, Sr. S.C. : *For the I.T. Deptt.*

ORDER

- 1.** This Appeal has been filed on 04.10.2023 by Ms. Aparna Saxena (hereinafter referred as “Appellant”), Director of M/s JAK Traders Pvt. Ltd. under Section 252(1) of the Companies Act, 2013, (hereinafter referred as the Act) praying for restoration of the Company’s name i.e. M/s JAK Traders Pvt. Ltd. in the Register of Companies maintained by Registrar of Companies, Uttar Pradesh (hereinafter referred as “ROC/Respondent”).
- 2.** M/s JAK Traders Pvt. Ltd. (hereinafter called as ‘Company’) was incorporated on 12.04.1985 under the Companies Act, 1956 bearing CIN: U17117UP1985PTC007131. The registered office of the Company is at 3/204, Vishnupuri, Kanpur, Uttar Pradesh- 208002.
- 3.** The Company is engaged in the business of consultancy, advisory and liaison work pertaining to the Import and Export of any kind of goods products, articles, services, technical know-how and cash assistance and other matter pertaining to it.
- 4.** The Authorised Share Capital of the Company is Rs. 2,50,000/- divided into 2,50,000 (Two Lakh Fifty Thousand)

Equity Shares of Rs. 100/- each and the Issued, Subscribed and Paid-up Share Capital of the Company is Rs.1,20,000/- divided into 1200 equity shares of Rs. 100/- each. Since its inception, the Company was being run by two directors namely Mr. Ajay Kumar Saxena (DIN:00977239) and Ms. Aparna Saxena (DIN:00978358).

5. The Appellant submits that the name of the company has been struck off by the ROC/Respondent vide order/notification dated 08.06.2022 because of default in complying with the statutory norms such as failure to file Financial Statements and Annual Returns for financial years 2014-15, 2015-16 and 2016-17. The ROC/Respondent initiated proceedings in view of these defaults due to not complying with the provisions of the Section 248(1) of the Companies Act, 2013 for striking off the name of the company from the Register of Companies.
6. The Appellant states that required statutory compliances could not be completed along with non-filing of annual returns due to the death of one of the directors namely Mr. Ajay Kumar Saxena who had an active role in running the

Company. The other remaining director Ms. Aparna Saxena,

who merely acted in the capacity of a sleeping director, due to lack of knowledge, could not carry out the necessary compliances as required under the Companies Act, 2013. Furthermore, no notices were issued by the Respondent as required under Section 248(1) and therefore, no opportunity was afforded to the Company to take necessary action.

- 7.** The Appellant submits that the Company has been active since its incorporation and has also been maintaining all the requisite documentation according to the provisions of the Companies Act, 1956 and Companies Act, 2013.
- 8.** The Appellant has annexed true copy of the bank statement of the Company as well as financial statement of the Company for the years 2014-15, 2015-16 and 2016-17 along with annual reports including financial statements for the subsequent years 2017-18, 2018-19, 2019-20, 2020-21 and 2021-22 with the petition.
- 9.** In view of the facts and circumstances of the case as explained above, the Appellant Company has prayed to pass appropriate order in terms of Section 252 (1) of the Companies Act 2013 for restoring the name of the Company in the Register of Companies.

- 10.** After considering the above petition, notices were issued to ROC and the Income Tax Department calling for their reports to satisfy ourselves whether restoration of the company would be in the interest of justice and in the public interest and appellant are genuinely interested in running the company after its restoration and the defaults on account of which, the company has been struck off can be considered inadvertent or deliberate.
- 11.** The ROC/Respondent has filed its reply wherein they state that the name of the Appellant Company was struck off from the register of companies on account of default in statutory compliances by not filing Balance Sheet and Annual Returns since 2017 under the Act. Despite being given fair opportunity of being heard by way of show cause notice, the company and its directors neither responded to the notice nor filed statutory returns. No objection was received from any person either, which further contravened Section(s) 92 and 137 of the Act. 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.

- 12.** The Income Tax Department has filed its reply/report, wherein they state that the Company has not made statutory compliances since the FY 2018-19 and onwards as evident from the balance sheet dated 31.3.23017, due to the demise of one of the directors Mr. Ajay Kumar Saxena. The last date of AGM is 28.09.2017 and the Company has filed its return of income for AY 2016-17, 2017-18 and 2018-19. Furthermore, there are neither outstanding demands nor any proceeding pending against the Company and therefore the Department has no objection to the restoration of the Company subject to filing of undertaking to fulfil all the statutory responsibilities and compliances under the Companies Act and Income Tax Act.
- 13.** The Appellant has filed an undertaking to the report of the Income Tax Department vide diary no. 956 dated 02.05.2024 and the same has been taken on record by this Tribunal.
- 14.** Both the above reports from ROC as well as the Income Tax Department have been considered in the hearing held on 11.10.2023. No such objection has been raised in the ROC report which may be of the nature of any serious statutory violations restricting the restoration of the company and only

prayed that the instant appeal may be decided on merit. It has also been found that the appellant company has been regularly carrying on its business and also filing its return of income. Default is only with regard to not filing the requisite statutory documents i.e. Balance Sheet and Annual returns from 2017 onwards to ROC as per prevalent mandate of the Companies Act 2013. The Income Tax Department has also not objected to the restoration of the name of the Company but subject to furnishing of an undertaking which has duly been filed by the Appellant vide diary no. 956.

- 15.** We find that a valid appeal u/s 252(1) of the Act has been filed and also, considered the facts and circumstances and the response from the concerned statutory authorities connected with the functioning of the companies, as discussed in the aforementioned paragraphs, wherein they have not raised any objections of the nature of serious statutory violations restricting the restoration of the company and have only prayed that the instant appeal may be decided on merit. The default is only with regard to non-filing of statutory documents, i.e., Balance Sheet and Annual Returns with ROC since 2017 due to the demise of one of the directors

Mr. Ajay Kumar Saxena, and the other director Ms. Aparna Saxena because of lack of knowledge and only acting in the capacity of a sleeping director, could not carry out the requisite statutory compliances. Furthermore, the Company proposes to continue its business operations after restoration. Therefore, 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 Petitioner Company in accordance with the statutory provisions.

- 16.** The restoration of the Company’s name will be subject to the payment of the cost of Rs. 20,000/- through online payment in *www.mca.gov.in* under miscellaneous fees by mentioning particular as “*Payment of cost for restoration of the company pursuant to orders in C. Appeal No.33/ALD/2023*” and also, to make payment of Rs. 20,000/- to the Prime Minister

National Relief Fund.

17. This Petition 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 as mentioned above. 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 Company is directed to file all the statutory documents including 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 fulfil all the other relevant statutory compliances, such as under the Companies Act, 2013 and the Income Tax Act, 1961, etc. 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 petitioner company prior to or during the period the name of the Company remained struck off.

- 18.** The Registry is directed to send e-mail copies of the order forthwith to all the parties in the matter.
- 19.** The appellant company is directed to deliver a certified copy of this order with ROC, Uttar Pradesh, Kanpur within 30 days of the receipt of the order.
- 20.** Certified copy of the order be issued upon making an application by any concerned party with all requisite formalities.
- 21.** Company Appeal No. 33/ALD/2023 stands disposed off accordingly.

-Sd-

**(Ashish Verma)
Member (Technical)**

-Sd-

**(Praveen Gupta)
Member (Judicial)**

Date: 12th July, 2024