

**IN THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH-VI**

**Appeal No.145/MB/2023**

*[Under Section 252(3) of the Companies Act, 2013 read with Rule 87-A of the National Company Law Tribunal Rules, 2016]*

In the matter of

**Mrs. Daksha Atul Desai**

Director of Metaklad System Private Limited,  
(DIN:00636073)  
203, Prabhu Kutir  
15, Altamount Road  
Mumbai-400026  
Maharashtra.

**.....Appellant**

V/s.

**Registrar of Companies**

100, 5<sup>th</sup> Floor, Everest Building  
Marine Drive  
Mumbai-400002  
Maharashtra.

**.....Respondent**

**Pronounced: 23.07.2024**

**Coram:**

**HON'BLE K. R. SAJI KUMAR, MEMBER (JUDICIAL)**

**HON'BLE SANJIV DUTT, MEMBER (TECHNICAL)**

**Appearance(s): Hybrid**

**For the Appellant:** Adv. Sunny Shah i/b Adv. Devanshi Sethi

**For the Respondent:** Rujuta Bankar, ICLS, ARoC, Mumbai O/o RoC.

**ORDER**

***[PER: SHRI SANJIV DUTT, MEMBER (TECHNICAL)]***

**BACKGROUND**

1. The present Appeal has been filed on 08.08.2023 under Section 252(3) of the Companies Act, 2013 (hereinafter referred to as “the Act”) by Mrs. Daksha Atul Desai, Director and shareholder of Metaklad System Private Limited having CIN : U63011MH2006PTC165954 (hereinafter referred to as “the Company”) praying for restoration of its name in the Register of Companies maintained by the Registrar of Companies, Mumbai (hereinafter referred to as “the RoC”).
2. The name of the Company was struck off from the Register of Companies maintained by the RoC on 07.07.2017 because the Company had failed to comply with the statutory obligations under the Act by not filing its statutory Returns for a continuous period of more than two years. The RoC published a public notice for striking off the name and dissolution of the Company in Form STK-7 dated 19.07.2017 which included the Company’s name at S.No.2421.

**AVERMENTS OF APPELLANT**

3. The Appellant submits that the Company was incorporated on 05.12.2006 under the Act. The Company was engaged in the business of development, installation and provision of solutions for metal cladding systems, false ceilings, flooring and walls. It was also carrying on the agency of materials required for the installation of metal cladding

systems. At the time of incorporation, the Company's directors were Ms. Lopa Pranav Desai, Mr. Devang Atul Desai, Mr. Kashyap Kiritkumar Patwa and Mr. Prakash Manilal Modi. On 10.05.2009, Mr. Prakash Manilal Modi resigned as director, followed by Mr. Kashyap Kiritkumar's resignation on 11.06.2012. On the same date, the Appellant was appointed as the Director of the Company. The issued, subscribed and paid-up share capital of the Company is Rs.1,00,000/- divided into 10000 shares of Rs.10/- each. The Appellant holds 2000 shares of the Company. The Appellant was under the impression that the original directors and the chartered accountant and/or other officers of the Company were ensuring due compliance with the requirements of the Act.

4. It is submitted by the Appellant that in or around May 2017, the Respondent purportedly published a notice under Section 248(1) of the Act mentioning the name of the Company, alleging that the Company had neither been carrying on business or operations for a period of two immediately preceding financial years nor had it made any application within such period for obtaining the status of a dormant company under Section 455 of the Act. The Appellant contends that she did not receive this Notice and believes that the Company also did not receive it. Thereafter, the Respondent *vide* its Notice dated 19.07.2017 under Section 248(5) of the Act published names of companies that had been struck off from the Register of Companies which included the Company's

name at S.No.2421 of the list.

5. It is submitted that in 2018, Ms. Lopa Desai, one of the directors of the Company, filed Company Petition No.566 (MB) of 2018 before this Tribunal under Section 252(1) of the Act to have the Company's name restored in the Register of Companies maintained by the Respondent. However, due to lack of representation, the Petition was dismissed *vide* order of this Tribunal dated 30.08.2018. Mrs. Lopa Desai did not challenge the order dated 30.08.2018 in appeal before the Hon'ble NCLAT.
6. Thereafter, Company Application No.1188 of 2020 was filed before this Tribunal for the review and recall of the Order dated 30.08.2018 passed in Company Petition No.566 (MB) of 2018 which is still pending before this Tribunal.
7. The Appellant is aggrieved that due to striking off of the name of the Company from the Register of Companies maintained by the Respondent, it is unable to carry out any business and the Company's funds lying in the bank accounts and fixed deposits have been frozen. It is submitted that the Company maintains Bank Account No.00022320004042 with HDFC Bank, Khar West Branch, Mumbai which had funds of Rs.5,22,528.09/- as on 30.01.2018. Further, the Company maintains Bank Account No. CBCA/01/000046 with Corporation Bank, Worli Branch, Mumbai which had funds of Rs.46,591.75/- as on 12.02.2017. Besides, the Company maintained a

Fixed Deposit No.00024470365483 with HDFC Bank, Khar West Branch, Mumbai which had funds of Rs.4,98,247.55/- on its maturity as on 13.10.2019. It is submitted that the amounts lying in the aforementioned bank accounts/ fixed deposit accounts have earned significant interest over time through the business carried on by the Company.

8. It is submitted that prior to the resignation of Mr. Kashyap Kiritkumar Patwa and Mr. Prakash Manilal Modi, the Company was in compliance with all requirements under the Act. It is contended that due to pure inadvertence, the compliances thereafter remained to be completed, as these were earlier managed by the erstwhile directors, Mr. Kashyap Kiritkumar Patwa and Mr. Prakash Manilal Modi. It is submitted that the Company has filed its Income-tax Returns for Assessment Years 2015-16, 2016-17 and 2017-18, but the filing of Annual Returns inadvertently remained to be complied with.
9. It is further submitted that in the event of revival of the Company and restoration of the name of the Company in the Register of Companies maintained by the Respondent, the Appellant undertakes that the Company will file the pending statutory documents i.e., the Financial Statements and Annual Returns for the Financial Years ending from 31.03.2013 till 31.03.2017 along with the filing fees and the additional fee, as applicable on the date of actual filing. The Appellant has referred to the order of this Tribunal dated 22.05.2020 in CP No.878/2020 in *Equisearch Broking Pvt. Ltd. vs. Registrar of Companies*, wherein order

of restoration was passed on the ground that amounts were lying in the fixed deposit maintained by the company. The Appellant has also placed reliance on judgment of the Hon'ble Supreme Court in **Canara Bank Vs. N.G. Subbaraya Setty, [(2018) 16 SCC 228]** and contended that despite dismissal of earlier appeal bearing CP No.566(MB) of 2018 by this Tribunal, the principle of *res judicata* will not be applicable in the present case. It is thus prayed that the name of the Company may be ordered to be restored in the Register of Companies maintained by the Respondent in the interest of justice.

#### **AFFIDAVIT IN REPLY OF THE RESPONDENT/ RoC**

10.The Respondent/RoC has filed an affidavit-in-reply and submitted its report to this Tribunal on 11.01.2024 explaining the sequence of events leading to the striking off of the name of the Company. It is stated that due to non-compliance of its statutory obligations and failure to file statutory returns for a continuous period of more than two years, the Company was considered for striking off by the RoC in a *suo motu* action under the provisions of Section 248 of the Act and also in pursuance of the circulars issued by the Ministry of Corporate Affairs, Govt. of India. Consequently, the name of the Company has been struck-off from the Register of Companies by the RoC. The RoC issued notice in Form STK-1 to the Company and its Directors, informing the intention of the RoC to strike off the name of the Company from the Register of Companies due to its failure to file statutory returns for a continuous period of more than

two years. It is submitted by RoC that it had also issued a public notice in Form STK-5 dated 05.05.2017 which was published on the website maintained by the Ministry of Corporate Affairs, Govt. of India and also in a leading English newspaper ('Times of India') and a widely circulated vernacular newspaper ('Maharashtra Times-Marathi') seeking objections against the proposed striking off of the name of the Company from the records of the RoC.

11. In the absence of any representation against the proposed strike-off action, the name of the Company was struck off from the Registrar of Companies on 07.07.2017 and the dissolution order was published on the website of the Ministry of Corporate Affairs *vide* notice in Form STK-7 dated 19.07.2017. In addition to the publication of the name of the Company on the website of the Ministry of Corporate Affairs, the name of the Company was also published in the Official Gazette on 19.07.2017. In view of the above facts and circumstances, it is submitted that the Appeal filed by the Appellant may be rejected as due process has been followed by the Respondent before striking off the name of the Company from the Register of Companies.

### **ANALYSIS AND FINDINGS**

12. Upon hearing the submissions on behalf of the Appellant and perusing the Report of the RoC, Mumbai along with the other documents available on record, we find that one of the directors of the Company, Ms. Lopa Desai had filed a C.P. No.566/(MB)/2018 under Section 252(1) of the Act seeking restoration of the name of the Company in the Register of

Companies maintained by the RoC which was dismissed by this Tribunal *vide* a speaking order dated 30.08.2018. On careful perusal of the said order, we find that the reason for dismissal of the said C.P. was not lack of representation as claimed by the Appellant in the present Appeal but because this Tribunal, *inter alia*, found that the Company was not carrying on any business or operations and that it had not filed Annual Returns for five years and thereby, it satisfied the criteria laid down in Section 248(1) of the Act warranting necessary action for striking off of its name from the Register of Companies maintained by the RoC. In other words, the matter was conclusively decided on its merits. Thus, the Tribunal did not find any valid grounds to interfere with the action of the RoC.

13. Subsequently, a recall Application was filed by Ms. Lopa Desai with CA No.1188/2020 (in CP 566/2018) before this Tribunal (Court-1), which was disposed of *vide* order dated 25.07.2023 which is reproduced as under:-

**“IA 1188/2020**

*None appeared for the petitioner. The above Interlocutory application is filed by the petitioner for recalling the final dismissal order dt. 30.08.2018 under which the main Company petition was dismissed on merits. Therefore, the only remedy of the petitioner is to file an appeal against such order and not by filing recalling application. In addition to the above, the above Interlocutory application is filed more than*



*2 years after passing the order and is barred by limitation.*

*Accordingly, the above IA is dismissed on both grounds  
confirming the earlier dismissal order dt. 30.08.2018”*

14. It is noticed that now the Appellant, another Director of the Company has approached the Tribunal by way of filing this appeal on 08.08.2023 under Section 252(3) of the Act arising from the same cause of action and seeking the same relief on the same ground. In these circumstances, the preliminary issue for consideration is whether the present appeal filed by the Appellant under Section 252(3) of the Act is maintainable in law.

15. A company can be struck off from the Register of Companies maintained by the Registrar of Companies under the provisions of either Section 248(1) or Section 248(2) of the Act. As per the provisions of Section 248(1), the Registrar, having reasonable cause to believe that a company has failed to commence its business within one year of its incorporation or to comply with certain provisions of the Act, is empowered to strike off the name of such company from its records after giving reasonable opportunity to the said company to explain such failure. On the other hand, under the provisions of Section 248(2) of the Act, a company may get its name struck off from the Register of Companies by filing an application in the prescribed manner to the Registrar of Companies after extinguishing all its liabilities and passing a special resolution with consent of seventy-five per cent of members in terms of paid-up share capital.

16. A close look at the provisions of Section 252(1) and Section 252(3) of

the Act reveals that an appeal under Section 252(1) can be filed by any aggrieved person within a period of three years from the date of order of the Registrar in case the company is dissolved by the Registrar of Companies under Section 248 by initiating proceedings under Section 248(1) of the Act. However, when a company gets its name struck off from the Register of Companies in the manner laid down under Section 248(2) of the Act, an application can be filed by the aggrieved company, member, creditor or workman before the expiry of twenty years from the publication of notice under Section 248(5) in the Official Gazette. Thus, the remedy of appeal is provided under Section 252(1) to an aggrieved person when the company is struck off at the instance of the Registrar of Companies on failure of such company to comply with the requisite conditions laid down under Section 248(1) of the Act. However, application under provisions of Section 252(3) can be made by aggrieved company, member, etc., when the company is struck off voluntarily at the behest of the promoters/ directors. Thus, it emerges that the provisions of Section 252(1) and 252(3) are distinct and mutually exclusive and operate under different set of circumstances. Section 252(3) is not intended to merely extend the period of limitation in cases which are otherwise covered under Section 252(1) but where the aggrieved person failed to file the appeal within the prescribed period.

17. Adverting to the facts of the present case now, we find that what the Appellant has filed is an appeal under Section 252(3) whereas only an application and no appeal can be filed under the said provision.

Moreover, the present case is not one where the name of the Company was struck off at the behest of its promoters/ directors in the manner prescribed in Section 248(2) of the Act. As a matter of fact, this is a case where the name of the Company was struck off by the Respondent/ RoC for non-compliance of the statutory requirements under Section 248(1) *vide* its order dated 19.07.2017. In these circumstances, the appeal would lie under Section 252(1) of the Act and not an application under Section 252(3) of the Act.

18. Taking into consideration the settled legal proposition that quoting a wrong provision of law should not disentitle the party to relief, the instant Appeal is treated as having been filed under Section 252(1) of the Act. However, we find that the present Appeal has not been preferred within a period of three years from the date of order of the RoC, as per the limitation provided under Section 252(1) of the Act. The name of the Company was struck off from the Register of Companies maintained with the Respondent/ RoC *vide* order dated 19.07.2017, whereas the Appellant filed the Appeal on 08.08.2023. Even if the Appellant is allowed the benefit of the order of Hon'ble Supreme Court dated 10.01.2022 passed in ***M.A. No.21 of 2022 in M.A. No. 665 of 2021 in Suo Motu Civil Writ Petition No.03/2020*** by way of exclusion of entire period from 15.03.2020 to 28.02.2022 from the period of limitation, we find that the instant Appeal is still time-barred.

19. Hence, in view of the aforesaid discussions, we are of the considered view that the present Appeal is hit by the law of limitation and is,

accordingly, not maintainable. Moreover, since the earlier Appeal under Section 252(1) filed by another Director of the Company has already been dismissed by this Tribunal on merits, the same would operate as *res judicata* and the present Appeal filed by the Appellant being another Director of the same Company emanating from same cause of action and seeking same relief on the same ground will not be admissible in law.

20. Accordingly, this Appeal bearing CA No.145/MB/2023 is **dismissed**.

Sd/-

**SANJIV DUTT**  
**Member (Technical)**

//Deepa//

Sd/-

**K.R. SAJI KUMAR**  
**Member (Judicial)**