

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-V**

CA No. 02/252/MB/2024

Under Section 252(1) of Companies
Act, 2013

In the matter of

**M/S. Safna Consultancy Private
Limited**

Represented by its Director
Marine Mansion, H.K.Bhahbha,
Bnadra , Mumbai 400 050

... Appellant/ Petitioner

V/s.

**THE REGISTRAR OF COMPANIES,
MUMBAI**

5th Floor ,100 Everest Building, Netaji
Subhash Road, Marine Dr, Mumbai,
Maharashtra - 400002.

Contact No: 022-22812627, 022-
22812645

Email: roc.mumbai@mca.gov.in

... Respondent

Order dated:03.07.2024

Coram:

Reeta Kohli , Hon'ble Member (Judicial)

Madhu Sinha, Hon'ble Member (Technical)

For the Appellant : Adv. Prachi Raval (PH)

For the Respondent/ROC: Ms. Rujuta Bankar (VC)

ORDER

1. This present appeal has been filed under Section 252 of the Companies Act, 2013 (hereinafter as Act) by "Safna Consultancy Private Limited", having Authorized share capital of Rs.10,00,000 divided into 2,000 equity shares of Rs. 100/- each, seeking relief against the respondent, *inter-alia* among other things, to restore the name of the company in the Register of Companies maintained by the Registrar of Companies, Mumbai.
2. The name of the Company was struck off from the Register on account of the reasons that, the Company has failed to file of its statutory returns for a continuous period of 2015-2016 to 2021-2022 and have not made any application within such period for obtaining the status of Dormant Company under Section 455 of the Act. The ROC has published a public notice for Striking off and Dissolution of Company i.e. STK-7 dated 12.09.2018.

Submissions from the Appellant:

3. It is submitted that the company was incorporated on 27th September 2004 under the Companies Act, 1956 vide CIN: U74140MH2004PTC104452. The Company did not file its statutory returns for a continuous period of more than six years with the Registrar of Companies as required under Section 10A (1)(a) of the Companies Act, 2013 and Rule

23A of the Companies (Incorporation) Rules, 2014 within the prescribed time i.e. 180 days.

4. It is submitted that one of the Board of Directors Mr. Perseus Jmashed Treasuryvala died on 01.06.2013 and since the Appellant Company was struck off the relevant Form intimating the demise of Mr Perseus Jamshed Treasuryvala could not be filed with the ROC and his name is still reflecting in the master data of the Applicant Company.
5. The Appellant Company submitted that due to lack of professional expertise, the Appellant Company couldn't comply with the statutory requirements of filling annual filling of forms with the Respondent/ROC.
6. It is further submitted that the ROC has initiated proceedings under section 248 of the Companies Act 2013 by order dated 12.09.2018 in Form STK-7. The Respondent struck off the Appellant Company, due to default in statutory compliances namely, failure to file Financial Statements & Annual Return for the period of 2015-16,2016-17,2017-18,2019-20,2020-21,2021-22, and 2022-23.
7. It is submitted that the Applicant didn't receive any show cause notice from Respondent and also no notice intimating removal of name from ROC in Form STK-7. However, the Respondent has published notice for removal of name of the Appellant Company in Form NO. STK-5 on 19.07.2018. Consequently on 11.09.2018 pursuant to Form No. STK 7 the Respondent struck off the name of register effective from 11.09.2018.
8. The Applicant further submitted that the Company is having Bank Account in Bank of India having balance of Rs. 62,06,324.19 as on 11.11.2019 and another Bank Account in the name of its PMC division with Bank of India having balance of Rs. 40,38,264. The Appellant Company also has a demat account with Punjab National Bank having DP ID:IN 300020 and Client Id No. 10028384. The Appellant further stated that the Bank Account has been frozen as a result of strike off the name of the Company by the Respondent.

9. Due to striking off the Appellant Company and the Directors have been disqualified and are therefore unable to act as Directors in any other Company.
10. The Appellant further submitted that the Company has filed its Income Tax Report for the Financial Year 2017-2018 till 2022-2023. The financial statements are prepared and duly audited by the statutory auditor for the period ended 31st March 2016 till 31st March 2023.
11. The Company is ready to comply with the relevant provisions of Companies Act 2013, Further the Company is willing to file the necessary Documents and Returns in compliance with the provisions of the Companies Act, 2013 same before the ROC Mumbai.

Submissions from the Respondent/RoC:

- 1) The Respondent/ ROC has filed a detailed report and submitted to the Hon'ble Tribunal, the sequence leading to the striking off of the company. It is stated that the Appellant has failed in the filling of its financial statements and annual returns as per the provisions of the Companies Act, 2013 and hence, the Company had been considered for being struck off by the Registrar of Companies, Mumbai, in *suo moto* action under the provisions of Section 248 of the Companies Act, 2013 and also in pursuance of the circulars issued by the Ministry of Corporate Affairs, Government of India, New Delhi from time to time. A notice in Form STK-I was issued. It is further submitted that the RoC/Respondent had issued a public notice in form STK-5 dated 19th July 2018.
- 2) Respondent further submitted that in absence of any representation against the proposed striking off action, the Registrar struck off the name of the Appellant Company under section 248(5) on 11th September 2018 and the dissolution order was published on the website of the Ministry vide STK 7 on 12th September 2018.

Findings:

12. The Company, Safna Consultancy Private Limited, has demonstrated its willingness and readiness to comply with the requirements by preparing the relevant documents and returns necessary for filing, if so permitted.
13. The Audited Annual Accounts for the years 2016 to 2023 have been enclosed with the Appeal, indicating that the Company has been in continuous operation and is committed to fulfilling its statutory obligations.
14. The present Appeal has been filed under Section 252(1) of the Companies Act, 2013. However, upon considering the specifics of the case, it is observed that the Company Appeal 02 of 2024 has been filed by the Director of Safna Consultancy Private Limited before the Tribunal after a period of 6 years since the Company was struck off on 11.09.2018 by the Respondent/Registrar of Companies (ROC).
15. It is pertinent to note that Section 252(1) of the Companies Act, 2013 allows an appeal to be filed within three years of the company being struck off. Given that the appeal in question has been filed after a lapse of six years, it is evident that the petition has been incorrectly filed under Section 252(1). The correct provision applicable in this scenario is Section 252(3) of the Companies Act, 2013, which permits a petition for restoration to be made within a period of twenty years by the Company or any member, creditor, or workman. The Section 252(3) of the Companies Act is as follows:

“If a company, or any member or creditor or workman thereof feels aggrieved by the company having its name struck off from the register of companies, the Tribunal on an application made by the company, member, creditor or workman before the expiry of twenty years from the publication in the Official Gazette of the notice under sub-section (5) of section 248 may, if satisfied that the company was, at the time of its name being struck off, carrying on business or in operation or otherwise it is just that the name of the company be restored to the register of

companies, order the name of the company to be restored to the register of companies, and the Tribunal may, by the order, give such other directions and make such provisions as deemed just for placing the company and all other persons 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.”

16. According to Section 433 of the Companies Act, 2013, the provisions of the Limitation Act, 1963 shall apply to the proceedings or Appeals before the Tribunal or the Appellate Body, as appropriate. Nevertheless, Section 252(3) of the Companies Act, 2013 provides a twenty-year period for the Company, or any member, creditor, or workman, to seek restoration of the name of the Company that was struck off. The technicality is being ignored at the moment, keeping in view the larger interest of the Appellant.
17. Therefore, this Bench is of the opinion that it would be just and proper to order the restoration of the name of Safna Consultancy Private Limited in the Register of Companies maintained by the ROC. While the petition has been incorrectly filed under Section 252(1), the Tribunal, exercising its discretion under Section 252(3) and the Appeal is being treated as having been made under section 252(3) if the Companies Act 2013. This Bench is of the view that, it would be just and proper to order restoration of the name of the Company in the Register of Companies maintained by the ROC. Even though the ROC report states that the default pertains to the financial years 2015-2022, the petitioner is seeking relief for the default covering the years 2015-2023. Thus let the prayer of the Appellant be allowed.
18. Accordingly, this Appeal is allowed. The name of the Appellant be Restored by the ROC **subject to payment of Rs. 20,000/- per Financial year. Therefore, prayer made by the Appellant for the period from 2015-2023 i.e a period of 8 years is granted. Appeal is allowed subject to payment of sum of Rs. 1,60,000/- to be deposited**

in the account of “Pay and Accounts Officer, Ministry of Corporate Affairs, Mumbai”. The appellant Company shall undertake to abide by the Provisions of the Companies Act, 2013. Consequentially thereupon the Bank Account/s if freezed shall be defreezed and permitted to be operated by the Appellant Company.

19. The Registrar of Companies, Mumbai shall give effect of this Order only after perusal of the Compliance report on

20. payment of cost imposed. The Company is directed to file all the required documents and to fulfil other relevant statutory compliances within 30 days from Restoration of its name in the Register of Companies maintained by ROC. **CA 02 of 2024 Disposed Off.**

Sd/-

Madhu Sinha
Member (Technical)

/Priyanka/

Sd/-

Reeta Kohli
Member (Judicial)