

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – II, CHENNAI
CP (CA) / 14/ CHE /2021**

(Under Section 252(3) of the Companies Act, 2013)

In the matter of M/s. BACHRAJ STOCKS PRIVATE LIMITED,

1. Mrs. Manju Shroff,
No.119, Venkataswamy Road West,
R.S. Puram, Coimbatore, Tamil Nadu – 641 002

2. Mrs. Lalitha Shroff,
No.17, Bharati Park, 7th Cross, Saibab Colony
Coimbatore, Tamil Nadu – 641 011

... Petitioners

Versus

1. **REGISTRAR OF COMPANIES, COIMBATORE,**
No.7, AGT Business Park, 1st Floor, Phase II,
Avinashi Road, Civil Aerodrome Post, Coimbatore,
Tamil Nadu – 641 014

2. **THE CHIEF COMMISSIONER INCOME TAX,**
Coimbatore Region, 63, Race Course Road,
Coimbatore, Tamil Nadu – 641 018

... Respondents

Order Pronounced on 26th July 2024

CORAM

Shri. JYOTI KUMAR TRIPATHI, MEMBER (JUDICIAL)

Shri. RAVICHANDRAN RAMASAMY, MEMBER (TECHNICAL)

For Petitioner : Mr. Aashish Jain Lunia, Advocate

For Respondent 1: Mr. Avinash Krishnan Ravi, Advocate

ORDER

1. This Petition has been jointly filed by **Mrs. Manju Shroff and Mrs. Lalitha Shroff** in the capacity of the members of the subject Company namely, **M/s. BACHRAJ STOCKS PRIVATE LIMITED**, under Section 252(3) of the Companies Act, 2013 seeking following reliefs

- i. *Quash and set aside the Show Cause Notice issued by the Respondent No. 1 to M/s. Bachraj Stocks (P) Ltd. dated 01.06.2000, and all the actions taken in pursuant thereto.*
 - ii. *Restore the name of the M/s. Bachraj Stocks (P) Ltd. in the Register of the Companies maintained by Respondent No. 1.*
2. We have heard the Parties and perused the documents on record.
 3. The brief facts of the matter are tabulated below: -

S. NO.	PARTICULARS	FACT
a)	Name of Company	M/s. Bachraj Stocks Private Limited
b)	CIN No.	U67120TZ1995PTC005960
c)	Date of Incorporation	27.03.1995
d)	Registered Office Address	26 A, Kannusamy Road, R.S. Puram, Coimbatore, Tamil Nadu- 641 002
e)	Date of Struck of under Section 560(5)	16.04.2002
f)	Reasons for Strike Off	The company has not filed its statutory annual returns, financial statements as per the provisions of the Companies Act, 1956, and thereby failed to follow the statutory compliances as provided under Section 159 and 220 of the Companies Act, 1956.

4. It is stated that the main object of the subject Company is to purchase, acquire, hold, exchange and sell shares, debentures, bonds, stocks, obligation or securities issued or guaranteed by any company, Government or Public body and to acquire any of the foresaid by original subscriptions, tender, purchase, exchange or otherwise and to guarantee the subscription for the same either conditionally or otherwise and to guarantee the subscription thereof and etc.,
The detailed objects are set out in the Memorandum of Association filed along with the Petition at Page 37 - 47.

5. It is stated that, the subject company is engaged in the business of buying, selling and dealing of securities.
6. It is submitted that the subject company was issued with a show cause notice dated 01.06.2000 for alleged defaults under Section 159, 166, 210 and 220 of the Companies Act, 1956.
7. It is further submitted that, on 10.01.2001 the Board of M/s. Bachraj Stocks Private Limited resolved to apply for Strike of Company voluntarily under Section 560 of the Companies Act, 1956. Subsequently on 13.01.2001 application for Striking Off was given and the company was struck off after verification.
8. It is stated that the subject company owns a substantial quantum of portion in the Stock Exchange Building located in Coimbatore in the capacity of being a member of Coimbatore Enterprises and Holdings Limited (CEHL).
9. It is submitted that the portion owned in the Stock Exchange Building located in Coimbatore has a significant asset value. CEHL and its Members received an offer from Foundation One Infrastructure Private Limited for purchase of the Membership and connected rights in respect of the said Asset as on 23.09.2020.
10. It is submitted that Subject Company and the members were interested to accept the said offer. For transfer of Membership the subject company has to be in active status. Therefore the petitioners has moved the present petition for revival of the struck off company to active state and restoring the name in

the Register of Companies maintained by the R1/ Respondent RoC, Coimbatore.

11. It is submitted that the Company would comply with all statutory requirements mandated by the Act and directed by the RoC once revival.
12. It is submitted that the Petition has been served to Respondents vide e-mail dated 22.12.2020. Despite service, R2 did not appeared.
13. Upon notice, the Respondent/ RoC filed the Report on 04.01.2024, wherein it is objected as follows,

“4. The company came forward with Suo - moto application for strike off under Section 560 of the Companies Act, 1956 and the company was struck off after duly complying with the procedures stipulated in the Act.

5. Hence the averments made in the application that the company was struck off subsequent to issue of Show cause Notice for default under Section 159, 166, 210 and 220 of the Companies Act, 1956 is factually not correct.

6. Further from the averments made in the application, it has been preferred by the Applicants not for carrying on business for which the company has been incorporated but only for the purpose of transfer of membership in M/s Coimbatore Enterprises and Holdings Limited (in which the struck off company is a member) to a proposed buyer.

7. Further, it is observed from the financial statement of the company that the company has not shown any amount towards investment in M/s Coimbatore Enterprises and Holdings Limited.....

..... 12. In view of the above, it is respectfully submitted that if this Hon'ble Tribunal deems it fit to restore the name of Subject Company with specific directions in regard to the matters specified in 8(i) and 8(ii) of Paragraph of the report with such costs as deemed fit and proper under the circumstances of the case.

The counsel for the RoC submitted during the hearing dated that RoC has no substantive objections in the matter and the above objections have been made in order to bring the true facts of issue before this Hon'ble Tribunal.

14. To substantiate the plea of revival, the Petitioner has placed the following documents on records,

- Incorporation Certificate, MoA and AoA of Subject Company (*At Page 26 – 48 of the Petition*)
- Board Resolution and Application made by the Board to the RoC, Coimbatore for Voluntarily Strike off under Section 560 of the Companies Act, 1956. (*At Page 52 – 65 of the Petition*)
- List of Members of Coimbatore Enterprises and Holdings Limited. (*At Page 66 – 68*)
- Offer Letter from Foundation One Infrastructure Private Limited for purchasing the membership rights. (*At Page 69 -70*)
- Membership Purchase Facilitation Agreement between the CEHL and Foundation One Infrastructure Private Limited. (*At Page 141 – 150 of the Additional Type set*)
- Members wise Pay out on transfer of Membership Right which shows value of Rs.41,98,882/-being Paid to the Subject Company. (*At Page 155 in the Additional Type set*)

15. This Tribunal has made the following observations from the facts and circumstances prevailing herein. It is seen that the notice dated 01.06.2000

issued against the Subject Company in respect of certain defaults committed under the provisions of the Companies Act, 1956 has no connection to the Strike off action by the RoC. Neither RoC nor the Petitioners submitted any record as to see what course of action was taken in respect of the said notice. In addition, it is not clear and explained whether the scope of adjudication in this aspect is within the purview of this Tribunal. Therefore without going into the merits of the 1st relief sought i.e., Quash and Set aside the show cause notice issued by R1/RoC to M/s. Bachraj Stocks Private Limited dated 01.06.2000 and all actions taken in pursuance thereof is *not allowed*.

16. Further, we found that the Subject Company was Struck Off based on the Voluntary Application

17. submitted by the Board then existed. The Company was struck off on 16.04.2002.

18. It is clear that the Petitioners after expiry of 18 years moved the Present petition under Sec 252(3) of the Companies Act, 2013 on 22.12.2020 and now wishes only to transfer the sole asset which is the membership rights in respect of CEHL for which the revival is essential.

19. Section 252 (3) of the Companies Act, 2013 provides as follows: -

"Section 252 (3): Appeal to Tribunal,

(3) 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."

20. In ***Purushottamdass and another (Bulakidas Mohta Company Private Limited V. Registrar of Companies, Maharashtra & Others.)***, Hon'ble ***Bombay High Court*** the observed as follows:

20. *"The objects of Section 560(6) of the Companies Act, is to give a chance to the company, its members and creditors to revive the company which has been struck off by the Registrar of Companies, within a period of 20 years, and to give them an opportunity of carrying on the business only after the company judge is satisfied that such restoration is necessary in the interests of justice."*

21. In ***M.A. Rahim & another V. Sayri Bai***, reported in ***MANU/TN/O218/1973***, the ***Division Bench of Hon'ble Madras High Court***, held that the word `just' connotes reasonableness and something confirming to `Rectitude' and `Justice', something `Equitable and Fair'.

22. In the view of above provisions, facts, circumstances and evidences on the record, this tribunal is of the considered opinion that, this

Subject Company should be restored to protect the interest of its members in order to execute the transfer of membership owned in CEHL.

23. The RoC concerned /R1 has not made any substantial objections to restore the company in the name of the Register of Companies and therefore 2nd Relief Sought in the petition i.e., Restore the Name of the **M/s. BACHRAJ STOCKS PRIVATE LIMITED** in the Register of the Companies maintained by the RoC, Coimbatore, is **allowed** subject to the following directions namely:

- I. The Registrar of Companies, concerned is ordered to restore the original status of the Company i.e. **M/s. BACHRAJ STOCKS PRIVATE LIMITED** as if the name of the Company has not been Struck Off from the Register of the Companies with resultant and consequential actions like changing the status of the Company from “**Strike Off**” to “**Active**”.
- II. The Company shall within a period of 30 days from the restoration of the name of the company in the register being maintained by the RoC, the petitioner will file *inter alia* all its compliances statutorily required to be made under the Companies Act, 2013 for the period from which there has been default with requisite charges/fees as well as additional fee/late charges.
- III. That the Restoration of the name of the company is also subject to the payment of the cost of **Rs.1,00,000/- (Rupees One Lakh only)** through online payment in www.mca.gov.in under miscellaneous fees by mentioning the particulars as “payment of cost for the revival of Company”, as volunteered by the petitioner during the hearing.

- IV. Until all the compliances are made by the Company, the Company shall not alienate or dispose of any of its valuable assets.
- V. It is made clear that by virtue of this order of restoration of the name of the Company in the register, it will not entitle the Directors of the Company whose names in the case have been disqualified by virtue of provisions of Section 164 of the Companies Act, 2013 by the Respondent/RoC automatically to be restored to directorship except in accordance with the law.
- VI. An affidavit of compliance of the aforesaid directions shall be filed by the petitioner within a period of 2 months from the date of this order.
- VII. The shareholders of the Company shall jointly submit an Undertaking to the Registrar of Companies stating therein that the accounts of the Company were not used as means to transact tainted money during the period of demonetization.
- VIII. Further, this order allowing the Petition shall also not circumscribe the power of the respondent to proceed against the Company and its Directors as mandated for alleged late filing of any forms, documents, returns and such other compliance under the provisions of Companies Act, 2013.

24. Accordingly, *CP (CA)/14/CHE/2021* is *allowed* and hereby *disposed of* without any costs.

-Sd/-

RAVICHANDRAN RAMASAMY
MEMBER (TECHNICAL)

-Sd/-

JYOTI KUMAR TRIPATHI
MEMBER (JUDICIAL)

Ganesh Prabhu