

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – II, CHENNAI
CA(CAA)/20 (CHE) / 2024**

*(Under Section 252(3) of the Companies Act, 2013
read with Rules 11 & 87A of the NCLT Rules, 2016)*

In the matter of M/S. MOONLIT VOYAGES PRIVATE LIMITED

INCOME TAX OFFICER

Corporate Ward 4 (1),
Room No. 429, 4th Floor,
Main Building, 'Aaykar Bhavan',
121, Mahatma Gandhi Road,
Nungambakkam, Chennai – 600 034

... Appellant

-Versus-

1. **M/S. MOONLIT VOYAGES PRIVATE LIMITED,**
Suite No. 3, 1st Floor, Parsn mannere,
No.442, Anna Salai, Chennai,
Tamil Nadu – 600 006 *... Respondent 1*

2. **REGISTRAR OF COMPANIES, CHENNAI,**
Block No. 6, B Wing 2nd Floor, Shastri Bhawan,
No.26, Haddows Road,
Chennai, Tamil Nadu – 600 006 *... Respondent 2*

3. **MOHAMED YUNUS MOHAMED YASIN,**
No.5/4, Yousuf Lane, Triplicane,
Chennai, Tamil Nadu – 600 005 *... Respondent 3*

4. **ABUBACKER SIDIQ KACHIMAIDEEN,**
No.14, Shanmuganathan Street, Seven Wells,
Chennai, Tamil Nadu – 600 001 *... Respondent 4*

Order Pronounced on 26th July 2024

CORAM

(Hearing conducted through VC)

SHRI JYOTI KUMAR TRIPATHI, MEMBER (JUDICIAL)

SHRI RAVICHANDRAN RAMASAMY, MEMBER (TECHNICAL)

For Appellant : Mr. Rajkumar Jhabakh, Mr. Ramana KumarB, Advocates

For Respondent 2 : Mr.Avinash Krishnan Ravi, Advocate

ORDER

1. This Appeal has been filed by **MR. GANAPATHY SUBRAMANIAM, INCOME TAX OFFICER**, Corporate Ward – 4(1), Chennai, under Section 252(3) of the Companies Act, 2013, read with Rule 11 & 87A of the NCLT (Amendment) Rules, 2017 being aggrieved against the order of Strike Off carried out by the Registrar of Companies, Chennai / Respondent No. 2 (hereinafter R2) under Section 248 of the Companies Act, 2013 for seeking restoration of the name of the Assesse Company / Respondent No. 1 (hereinafter R1) in the Register maintained by the R2/ RoC.
2. The brief facts of the matter are tabulated below: -

S. No.	PARTICULARS	FACT
a)	Name of Company	M/s. Moonlit Voyages Private Limited
b)	CIN No.	U74999TN2017PTC117403
c)	Date of Incorporation	05.07.2017
d)	Registered Office Address	Suite No. 3, 1st Floor, Parsn Mannere, No.442, Anna Salai, Chennai, Tamil Nadu – 600 006
e)	STK-5 Date	22.12.2021
f)	STK-7 Date	03.03.2022
g)	Reasons for Strike Off	The Company hasn't been carrying on any business or operation for a period of two immediately preceding financial years and has not made any application within such period for obtaining the status of Dormant Company under section 455 of the Companies Act, 2013.

3. It is submitted that the present Appeal has been filed for revival of the R1 Company so as to enable the Appellant to conduct Assessment, Penalty and other appropriate proceedings under Income Tax Act, 1961 against the R1 Company.
4. It is submitted that Respondent 1 had escaped the assessment of certain financial transactions and foreign remittance for which the Income Tax department has re-opened assessment for the AY 2019 – 2020. In order to complete these proceedings the necessity of restoration of company in the register of companies aroused.
5. The Ld. Counsel for the Appellant stated that if the Struck Off company is not restored to Active Status, it will result in substantive revenue loss to the exchequer and also enable the defaulting company to go scot free and thus no tax demand would be realized.
6. The Tribunal vide order dated 20.03.2024 has directed the Appellant to serve notice of hearing on the Respondents and file an AoS to that effect. The Appellant has filed the same on 27.04.2024. Despite Service except R2 none appeared.
7. Upon notice, the Respondent / RoC filed the Report on 29.04.2024, wherein it is stated as below,

“13. The present appeal is filed by Shri. P Ganapathy Subramaniam, in the capacity of Income Tax Officer, Corporate

Ward-4(1), Chennai. The Applicant is an Officer of Ministry of Finance, Government of India entrusted with the duties of collecting revenue for the Government. The present application is filed by a Statutory Authority to protect the interest of revenue to the Government. As per the Applicant, the company has committed serious violations of provisions of Income Tax Act, 1961 and the company is liable to pay taxes of an amount which can be determined only after the revival of the company.

14. In view of the foregoing circumstances, it is respectfully submitted that before grant of prayer of the Appellant by this Hon'ble Tribunal,

A. The application may be allowed on its merits.

B. The Appellant may kindly be directed to submit a report to the respondent furnishing the details of tax assessed and moved from the company after the revival of the subject company."

RoC does not raise any significant objections in respect of this Appeal.

8. We have heard the submissions of the Appellant and the Respondent / RoC.

The Tribunal makes the following Observations.

The Appellant has placed the Notice and order dated 29.03.2023 passed against R1 Company under Section 148 of the Income Tax Act, 1961.

From the Perusal of records it appears that, this Appeal has been filed by a statutory authority to protect the interest of revenue to the Government of India. As per the Appellant, Income Tax department has identified R1 has escaped assessment of financial transactions valuing around Rs.23,72,08,896/- and foreign remittance valuing around

Rs.7,29,97,500/- for AY 2019 – 2020, which is to be re-opened and assessed for which revival of the Struck off company is necessary.

9. Section 252 of the Companies Act, 2013 provides as follows: -

“Section 252: Appeal to Tribunal,

(1) *Any person aggrieved by an order of the Registrar, notifying a company as dissolved under section 248, may file an appeal to the Tribunal within a period of three years from the date of the order of the Registrar and if the Tribunal is of the opinion that the removal of the name of the company from the register of companies is not justified in view of the absence of any of the grounds on which the order was passed by the Registrar, it may order restoration of the name of the company in the register of companies:*

Provided that before passing any order under this section, the Tribunal shall give a reasonable opportunity of making representations and of being heard to the Registrar, the company and all the persons concerned:

Provided further that if the Registrar is satisfied, that the name of the company has been struck off from the register of companies either inadvertently or on the basis of incorrect information furnished by the company or its directors, which requires restoration in the register of companies, he may within a period of three years from the date of passing of the order dissolving the company under section 248, file an application before the Tribunal seeking restoration of name of such company.

(2) *A copy of the order passed by the Tribunal shall be filed by the company with the Registrar within thirty days from the date of the order and on receipt of the order, the Registrar shall cause the name of the company to be restored in the register of companies and shall issue a fresh certificate of incorporation.*

(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."*

10. The above provisions, vests this Tribunal, with a discretion to restore the subject Company whose name has been Struck Off, if the statutory authority is able to demonstrate that there arises a necessity under any law and it is just to do so.

11. In the view of above provisions, facts, circumstances and evidences on the record, this tribunal is of the considered opinion that, this R1 Company should be restored to protect the interest of the Government. Further the RoC/R2 has not made any objections to restore the company in the name of the Register of Companies and this tribunal pass the following;

(i) The Registrar of Companies concerned / the respondent R2 herein, is ordered to restore the original status of the Company i.e. **M/s. Moonlit Voyages Private Limited** as if the

name of the Company has not been Struck Off from the Register of Companies with resultant and consequential actions like changing status of Company from "strike off" to "Active";

(ii) The Appellant is permitted to deliver a certified copy of this order with RoC concerned within 30 days of the receipt of this order;

(iii) On such delivery and after duly complying with above directions, the Registrar of Companies concerned is directed to, on office name and seal, publish the Order in the Official Gazette, and

(iv) This Order is confined to the violations, which ultimately lead to the impugned action of "striking off" of the Company, and it will not come in the way of RoC concerned to take appropriate action(s) in accordance with law, other violations/offenses, if any, committed by the Respondent company R1 prior to or during the "Striking Off" period.

(v) The Appellant shall submit a report to the concerned Registrar of Companies furnishing details of the tax assessed and recovered from the Company after revival of the Company.

12. Accordingly, CA (CAA)/20(CHE)/2024 is *allowed* and hereby *disposed of*.

-Sd/-

**RAVICHANDRAN RAMASAMY
MEMBER (TECHNICAL)**

-Sd/-

**JYOTI KUMAR TRIPATHI
MEMBER (JUDICIAL)**

Ganesh Prabhu