

**NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH (COURT-II), CHANDIGARH**

CP No.107/Chd/Chd/2022

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

IN THE MATTER OF:

J P Fintech Synergies Private Limited
(Through Its Shareholder/Director, Vikram Vohra)

IN THE MATTER OF:

Vikram Vohra
(Shareholder/Director of J P Fintech Synergies Private Limited)
S/o Mr. Madan Mohan Vohara,
R/o 110, Aspen Greens Nirvana Country,
Sector-50, Gurgaon, Haryana, 122018

.....Appellant

Versus

1. Registrar of Companies, Punjab & Chandigarh

Corporate Bhawan, 1st Floor,
Plot No. 4-B, Madhya Marg,
Sector 27-B, Chandigarh-160019

2. Income Tax Department

Aayakar Bhawan, Sector-17 B,
2nd Floor, Chandigarh

...Respondents

Order delivered on:- 25.04.2024

**Coram: HON'BLE DR. P.S.N. PRASAD, MEMBER (JUDICIAL)
HON'BLE MR. UMESH KUMAR SHUKLA, MEMBER (TECHNICAL)**

Present: -

For the Appellant : Mr. Rajiv Goyal, Advocate
Income Tax Department: Mr. Yogesh Putney, Senior Standing Counsel

**Per: Dr. P.S.N. Prasad, Member (Judicial)
Mr. Umesh Kumar Shukla, Member (Technical)**

ORDER

1. This Company appeal has been filed by **J P Fintech Synergies Private Limited** having registered office at 139-140-141, Sector 17C, Chandigarh 160017 (CIN U6120CH1995PTC016080) (hereinafter referred to as “Company”) **through Vikram Vohra, son of Mr. Madan Mohan Vohara, (Ex-Director of J P Fintech Synergies Private Limited)** residing at 110, Aspen Greens Nirvana Country Sector-50, Gurgaon, Haryana, 122018 (DIN No.03451679) under Section 252(3) of the Companies Act, 2013 (hereinafter referred to as “Act”) read with Rule 87A of the National Company Law Tribunal Rules, 2016 (hereinafter referred to as “Rules”) for restoring the name of the company in the Register of Companies, maintained by the Registrar of Companies, Punjab and Chandigarh (hereinafter referred to as ‘RoC’).

FACTS OF THE CASE

2. The facts of the case, as stated in the appeal, is summarised below:
- (i) The Company was incorporated on 23.10.1995 under the provisions of the Companies Act, 1956 as a Private Limited vide registration no. 016080 having jurisdiction with the RoC and Mr. Vikram Vohra (DIN No.03451679) and Mr. Gulshan Vohra (DIN03451674) were the directors of the company, at the time when the company was struck off from the records maintained by RoC. The authorised and paid up share capital of the company is Rs.5,00,000/- divided into 50,000 equity shares of Rs.10/- each and Rs.1,00,000/- divided into 10,000 equity shares of Rs.10/- each. The details of the applicants, as specified in Affidavits verifying appeal and copy of Certificate of Incorporation, Memorandum & Articles of Association &

Master Data of the company are attached with the Appeal as Annexure A-1 and Annexure A-2 respectively.

- (ii) The RoC has issued a public notice STK-5 dated 20.06.2018 under section 248 of the Act and in terms of section 248(5) of the Act, the name of the Company was struck off on 11.09.2018 by RoC through a public notice STK-5 dated 11.09.2018, copy of the same are attached with the Appeal as Annexure A-3.
- (iii) The appellants were not even aware of any of the Public notices (STK 5/STK 7) published by respondent on the website of Ministry of Corporate Affairs (www.mca.gov.in) of the striking off the name of the Company and have come to know recently about this fact. When it came into the knowledge of appellants that the company has been struck off, they immediately initiated the process of filing this petition.
- (iv) The Appellants being the directors of the struck off company have filed all the financial statements and annual return till financial year 2011-12 with the ROC, however they admit their fault for non-filing of the financial statements from financial year 2011-12 onwards with the ROC, the Company has filed Income Tax Returns till the F.Y 2011- 12.
- (v) The subject matter of the Appeal is within the jurisdiction of the National Company Law Tribunal ((hereinafter referred to as "NCLT"), Chandigarh Bench.
- (vi) By virtue of section 252(3) of the Act, the appeal could be filed before expiry of the twenty years from the date of the order of the RoC notifying

the name of the Company as strike off, in the official gazette of the RoC. As the name of the Company was dissolved vide Gazette Notification dated 11.09.2018, the appeal is filed within the limitation period in accordance with the provisions of Limitation Act, 1963.

- (vii) The Respondent's order for removal of name of struck-off company is based on the presumption that the Struck-off company has not carried on any business or operation for a continuous period of immediately preceding years, which is based on whether the company has filed its Financial Statements & Annual Return for the immediately past four years before the financial year in which the Strike off order is issued. The normal operations of the Company were started soon after incorporation and all the financial statements & Annual Returns along with Audit reports were adopted by the Company in Annual General Meeting, which clearly shows that the Company was in operation & carrying its lawful business and the presumption of Respondent is not true. A copy of financial statement including Audit report for the financial years from 2010-11 till 2017-18 are annexed with the appeal as Annexure A-4. The profit earned by the Company for the last three financial years before the order of strike off has also been depicted in the appeal as below:

Year	F.Y. 2015-16	F.Y. 2016-17	F.Y.2017-18
Net Profit/Loss (Rs.)	(34,060)	(31,381)	(28,973)

- (viii) They have complied with all the laws applicable to the struck off company, including preparation of financial statements, conducting Annual General Meetings etc. as per the provisions of Companies Act 1956/2013. They have appointed the auditors in every year, who have conducted the annual

audit of company's accounts and have given a clean Audit report. The only default, the appellants have made is the non-filing of these documents from FY 2012-13 with ROC.

- (ix) The Company has a Registered Property in its name to the value of Rs.11,34,400, whose documents are attached with the appeal as Annexure A-5.
- (x) The company is also paying Telephone Bills and the Electricity Bills on a regular basis, the copy of said bills are attached along with the appeal as Annexure A-6.
- (xi) The Company is holding current account bearing Current Account Number: 20030400196 with Bank of Maharashtra, Sushant Lok Gurgaon Branch at address GF-1-2 B Block, Times Square, Sector Road, Sushant Lok, Gurgaon-122109, Haryana and the Copy of the Bank Account Statement is attached with the appeal as Annexure A-7.
- (xii) The Company has also complied with filing of its income tax returns from FY 2011-2012 and is regular in deducting TDS & depositing it with income tax department. The copies of last ITR Form filed by the struck off Company are annexed along with the appeal as Annexure A-8.
- (xiii) In the event of its revival and restoration of the name of the Company in the Registrar maintained by the Respondent, the appellants shall file all outstanding statutory documents i.e. financial statement & annual returns along (which they have already prepared) with the additional fee, as applicable on the date of actual filing.

(xiv) Non-compliance in filings of financial statements & annual return with RoC was done with sheer ignorance of Appellants but without any mala-fide intention on the part of the Appellants. The principle of natural justice demands that the other stakeholders including Creditors of Company should not be penalized for the fault of Directors, for not filing the Annual financial statements & annual Return, because neither it is the fault of such stakeholders nor do they have any information about the notices sent by ROC for striking off the company and therefore, none of the Stakeholders of the Company should be prejudiced by the order of the Hon'ble NCLT.

(xv) The Director & Shareholder does not have any objection, if the name of the Struck Off company is restored in the Register of Companies maintained by the RoC. The consent given by the Director & Shareholder for restoration of the name of the Struck Off Company are annexed with the appeal as Annexure A-9.

3. This Tribunal in its hearing held on 02.12.2022 directed the counsel of the appellant to file correct memo of parties and after compliance, issue the notice of the petition to the concerned RoC and the Income Tax Department.

4. The Amended Memo of Parties and Affidavit of service were filed by the appellant vide Diary No. 02354/1 dated 16.12.2022 and 02354/2 dated 06.01.2023 respectively.

Report of RoC

5. The RoC has submitted its report vide Diary No. 02354/3 dated 20.02.2023, in which it has submitted that:

- (i) As per record of MCA Portal, the Company having registered office at 139-140-141, Sector 17 C, Chandigarh, India was incorporated on 23.03.1995 (Master data of the Company also attached as Annexure-I with the Report) and at the time of Striking off the Company, the following persons were directors of the Company:

Sr.No.	Name	Designation
1.	Gulshan Vohra (DIN 0345 1674)	Director
2	Vikram Vohra (DIN 0345 1679)	Director

- (ii) The Company had filed its last Annual Returns and Financial Statements for the Financial year 2011-2012. Thereafter, no Annual Returns and Financial Statements have been filed by the Company for a period of almost 5 years till 2017.
- (iii) The Company is not doing any business activity since 2004, as revenue from operation is nil since Financial Year 2003-2004 to Financial Year 2016-17, only minimal expenses have been incurred.
- (iv) The RoC had issued notices to the Company and its directors in terms of Section 248(1) of the Companies Act, 2013 read with Rule 7 & 9 of Companies (Removal of Names of Company from the Register of Companies) Rule, 2016 informing to remove the name of company from the Register of Companies. However, no reply to the said notices u/s 248(1) was received by this office and believing that the Company was not carrying on business or not in operation, the Company was struck off and Gazette notification in terms of section 248 of the Companies Act, 2013 was published notifying the names of companies, which were struck off vide notification No. 37 dated 15.09.2018, in which the name of the company is

appearing at Sr. No. 1580. The copy of the Gazette of India notification No. 37 dated 15.09.2018 to 21.09.2018 has been enclosed as Annexure-II with the report.

6. It has been prayed in the RoC Report that:

- (a) The appeal may be dismissed, however if it is to be allowed, the appellant may be directed to show that at the time of striking off, the appellant company was carrying on business or was in operation.
- (b) The Appellant company and its directors may be directed to file all the pending documents including all the due Annual Returns and Balance Sheets along with the requisite fee and additional fee as prescribed in the Rules.
- (c) The cost may be imposed on the appellant/petitioner for avoiding filing of the statutory documents on the MCA Portal.
- (d) Any other directions, as may be deemed fit in the facts and circumstances of the case and in the interest of justice,

Report of Income Tax Department

7. The Income Tax Department in its report filed vide Diary No. 02354/4 dated 25.04.2023 has enclosed the letter F.No. ITO/Ward-13(1)/2022-23/Appeal NCLT/5 dated 20.04.2023 of R.P. Verma, Income Tax Officer, Ward 13(1), New Delhi, wherein it is submitted that no demand is outstanding as on date as per record i.e. ITBA portal in respect of M/s JP Fintech Synergies Private Limited (PAN: AABCJ5113B). Further as per ITBA Portal, no Income Tax Proceedings is pending against the assessee

Company M/s J P Fintech Synergies Private Limited (PAN: AABCJ5113B), However the said report does not enclose any prayer on behalf of the Income Tax Department.

COMPLIANCE AFFIDAVIT BY APPELLANT

8. This Tribunal vide its Order dated 22.05.2023 directed the appellant to furnish an affidavit to the effect that at the time of striking off, it was carrying on business. The compliance Affidavit has been filed by the Appellant vide Diary No. 02354/5 dated 06.07.2023, wherein the appellant has reiterated the facts mentioned in the appeal. It also submitted that the company had following assets and liabilities in the year 2017-18:

Assets	Amount (Rs.)	Liabilities	Amount (Rs.)
Current Assets	9,413/-	Non-Current Liabilities	9,00,000/-
Non-Current Assets	48,52,254/-	Current Liabilities	41,83,387/-

9. The appellant, relying on the following judgements passed by the Hon'ble National Company Law Appellate Tribunal, has also submitted in its Affidavit that the company is fit for revival in terms of dictums, which clearly states that if the Company has some assets and liabilities, then it is equitable to revive it:

- Khetan Granite Private Limited vs Office of Registrar of Companies, Jharkhand, MANU/NL/0017/2020
- Calcutta Rubber Factory Private Limited and Ors. Vs. Registrar of Companies, Delhi and Haryana, MANU/NL/0602/2019
- Insuflex Ind Private Limited Vs Registrar of Companies, Maharashtra and Ors., MANU/NL/0622/2019
- Basant Kumar Berlia and Ors. Vs Registrar of Companies, West Bengal Nizam Palace and Ors., MANU/NL/0031/2019

DIRECTIONS

10. After careful consideration of the report of RoC, Income Tax Department and other documents, this Tribunal is of the view that it would be just, equitable, and fair in the interest of justice to provide an opportunity to the company to rectify its defaults and continue the business. Accordingly, this Tribunal, in the exercise of the powers conferred on it under Section 252 of the Companies Act, 2013, orders that:

- a. The RoC, subject to payment of costs of Rs.1,00,000/- (Rupees One Lakh only) to be paid by the appellant in favour of “Prime Minister's National Relief Fund (PMNRF)” is directed to restore the original status of the Petitioner company, as if the name of the company had not been struck off from the register of companies with the resultant and consequential actions like changing status of petitioner company from ‘struck off’ to ‘active’.
- b. The appellant is directed to deliver a certified copy of this order to the RoC, within thirty days of the receipt of this order.
- c. On such delivery and after due compliance with the above directions, the RoC is directed to publish the order in the official gazette under his office, name and seal.
- d. The appellant/ company is directed to file all the pending documents including all the due annual returns and balance sheets along with the requisite fee, and additional fee as prescribed in the Rules and fines as decided by RoC, within 45 days from the date, on which its name is restored on the register of companies maintained by the RoC.

- e. This order is confined to the violations, which ultimately led to the impugned action of striking off the name of the company. It will not come in the way of the RoC, to take appropriate action in accordance with the law for any other violations/offences, if any, committed by the appellant/ company prior to or during the period, when the name of the company remained struck off.
- f. The Income Tax Department is granted the liberty to proceed against the appellant/ company for non-filing/belated filing of the return of income/other default(s) under the provisions of the Income Tax Act, 1961 and the appellant is directed to discharge the outstanding demand and the demand, if any, found later on against the company.
11. The C.P. No. 107/Chd/Chd/2022 is allowed. The case papers and folders may be consigned to the Record Room.
12. The Registry is directed to send/ e-mail copies of the order forthwith to all the parties including the counsel.

Sd/-

(Umesh Kumar Shukla)
Member (Technical)

Sd/-

(Dr. P.S.N. Prasad)
Member (Judicial)

April 25, 2024
Vishesh