

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

Company Appeal. No. 8/Chd/Hry/2021

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

IN THE MATTER OF:

Khatushyam Engineers Private Limited

Registered Office: D-5/14, 2nd Floor,
Cosmos Floors, Ardee City, Near Ardee School,
Gurgaon HR 122001 IN
CIN U45200HR2013PTC050343

Represented Through its Shareholder,
Mr. Gaurav Kishore Bhardwaj
S/o Shri Ashok Sharma
Address: 534/2A, Ghatal Mehniawas Maheshwari
Rewari, Haryana India 123106

.....Appellant

Versus

1. Registrar of Companies, Delhi & Haryana

IFCI Tower, 4th Floor, 61, Nehru Place,
New Delhi-110019

2. Income Tax Department

Income Tax Office, ITO Circle-1, C.R. Building,
Plot No. 19, ISBT Road, 17C, Sector 17, Chandigarh-160017

...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. Prateek Kedawat, Advocate
Income Tax Department: Mr. Yogesh Putney, Senior Standing Counsel
For the ROC & RD : Mr. Vineet Khatri, Advocate

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

ORDER

1. This Company appeal has been filed by **Khatushyam Engineer Private Limited** having registered office at D-5/14, 2nd Floor, Cosmos Floors, Ardee City, Near Ardee School, Gurgaon HR 122001 (CIN U45200HR2013PTC050343) (hereinafter referred to as the “Company”) through its shareholder Mr. Gaurav Kishore Bhardwaj, S/o Shri Ashok Sharma, residing at 534/2A, Ghatal Mehniawas Maheshwari, Rewari Haryana India 123106 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’).
2. As the registered office of the company is in Haryana, this appeal is within the territorial jurisdiction of this Tribunal.

FACTS OF THE CASE

3. The facts of the case, as submitted in the appeal, have been summarised below:
 - (i) The company was incorporated under the provisions of The Companies Act, 1956 on 11.09.2013 by the RoC to carry on the activities as set out in the main objects clause of Memorandum of Association of the Company.

"To engage in the business of engineering, contracting and constructions including the design, manufacture, construction, erection, alteration, repair and installation of plants, building, structure, ways, works, systems and mechanical, electrical and electronic machinery, equipment, apparatus and devices

To carry on the Consultancy business in the field of light, medium and heavy engineering machinery, turnkey projects, setting of yarn and textile manufacturing and processing units, machineries, provision of textile technology in natural fibre and manmade fibre and installation of projects of electrical power, electronics, petrochemicals, plastics, paper, chemicals consumable and durable goods and to provide financials engineering

and project consultancy services to foreign and Indian buyers, sellers, exporters, importers, manufacturers, traders, enterprises in all the fields and trades.

To carry on the business as constructionist and structural engineers, mechanical, electrical and civil engineers, masons and masonry and building contractors and as government, military, railway, public works, general, public works, general and civil contractors."

A copy of certificate of incorporation along with the Memorandum of Association and Articles of Association of the company have been annexed as Annexure A-5 with the appeal.

- (ii) The authorized share capital of the company is Rs.1,00,000/- (Rupees One Lakh Only) consisting of 10,000 equity shares of Rs.10/- each, out of which 10,000 equity shares have been issued, subscribed and fully paid up and accordingly Rs.1,00,000/- is the paid up share capital of the company. A copy of Master Data as stated to be downloaded from the MCA has been annexed as Annexure A-6 with the Appeal.
- (iii) As per shareholder list annexed as Annexure 3 with the Appeal, there are two shareholders as on 26.03.2021 namely Gaurav Kishore Bhardwaj and Neha Bhardwaj each holding 5000 equity shares.
- (iv) As per the list of directors annexed as Annexure 4 with the Appeal, there are two directors namely Neha Bhardwaj (DIN 06656125) since 11.09.2013 and Gaurav Kishore Bhardwaj (DIN 06719478) since 22.10.2013.
- (v) There have been lapse in regular filing of returns of the Company with the RoC, but the Company has been carrying on its business, even though it has been badly facing acute recession.
- (vi) The RoC has issued a public notice in Form No. STK-5 bearing no. ROC-DEL/248(1)/STK-5/2019/3789 dated 09.08.2019 indicating its intention to

remove/ strike off the name of the company from the Register of Companies maintained by it unless a cause is shown to the contrary within thirty days from the date of publication of said notice due to the default made by the Company in statutory compliances, namely failure to file financial statements & annual returns for the preceding financial years. A copy of the form no. STK-5 dated 09.08.2019 along with a copy of the relevant page of the uploaded file under the sign of RoC has been annexed as Annexure A-1 with the Appeal.

- (vii) Thereafter, the RoC had initiated proceedings under section 248 of the Companies Act, 2013 for striking off the name of the Company from the Register of Companies maintained by it and vide public notice no. ROC/DEL/248(1)/STK-7/6217 in Form No. STK-7 on 29.10.2019 struck off the name of the company from the Register of the Companies, in which the name of the company appears at serial no. 3774. A copy of Form No. STK-7 dated 29.10.2019 along with a copy of the relevant page of the uploaded file under the sign of RoC has been annexed as Annexure A-2 with the Appeal
- (viii) The Board of Directors of the Company could not file a reply to RoC as when the Appellants were about to file the required documents in support of RoC notice, they came to know that the Company has been struck off by the RoC, thereby restraining them to file such documents. The Appellant had prepared all the documents as mandated under law and is ready and willing to cure irregularity.
- (ix) The Company has substantial assets and liabilities and the financial statements of the Company evidently depicts that the Company is a going

concern and is continuously carrying out its business operations. The copies of financial statements of the Company for the years ending 31.03.2017, 31.03.2018, 31.03.2019 and 31.03.2020 have been annexed as Annexure-7 with the Appeal.

- (x) Since the directors of the Company were not aware of the provisions of the Companies Act regarding e-filing of the financial statements and annual return, therefore, after the introduction of MCA system, the Company could not file statutory returns and the name of the Company was struck off by the RoC from the Register of Companies maintained by it. However, in the event of restoration of the name of the Company in the Register maintained by the RoC, the appellant shall file all pending statutory documents i.e., all the financial statement & annual returns.
- (xi) Unless the present application is allowed and the name of the company is not restored in the Register of Companies maintained by the RoC, the Company, appellants as well as the shareholders and creditors shall suffer irreparable loss and hardship and will be highly prejudiced.
- (xii) The company is regularly complying with the Income Tax Act, 1961 and had filed its income tax returns since incorporation and the copies of acknowledgment receipts thereof have been annexed as Annexure-8 with the Appeal.
- (xiii) The Company is also maintaining its Bank Account bearing no. 915020041541602 with the Axis Bank, which also evidences that the company is regularly carrying its business operations & activities. A copy of Bank statement has been annexed as Annexure-9 with the Appeal.

- (xiv) The Company's Director intend to run the business and pay off the liabilities as per balance sheet of company.
- (xv) The company neither has any mala fide intention of non-replying of the RoC's notice nor it has taken it for granted, but it took immediate action for filing of the returns, however due to lack of working capital and ignorance of the provisions of the Companies Act, 2013 and its consequences, the company could not file its Annual Returns and Financial Statements.
- (xvi) It shall be just that the name of the Company be restored and such restoration shall be in the interest of the company, its shareholders, creditors and public interest. If the name of the Company is restored to the register of companies maintained by the RoC, no one shall suffer any prejudice and in case not allowed, the appellant and people related to Company would suffer irreparable loss.
- (xvii) The Appellant, being the shareholder of the Company has filed this appeal within the limitation period i.e. within the period of 20 years from the date of publication in the official Gazette of the notice under Sub Section (5) of the Act to get the name of the Company restored, on the Register of Companies maintained by RoC.
- (xviii) The appellants had not previously filed any appeal, application, writ petition or suit regarding the subject matter in respect of which this Appeal is being made, before any court of law or National Company Law Tribunal or any other authority with respect to the matter mentioned in this Appeal.

4. This Tribunal vide order dated 07.12.2021 directed to issue the notice of the petition to the RoC and the Income Tax Department. The Affidavit of service has been filed by the appellant vide Diary No. 00665/1 dated 10.02.2022.

ROC REPORT

5. The RoC has submitted its report vide Diary No 00665/2 dated 18.11.2022, vide which it has submitted that:

- (i) As per available records on MCA 21 Portal, the Petitioner is the director of the company Khatushyam Engineers Private Limited having CIN U45200HR2013PTC050343, which was incorporated on 11.09.2013 under the provisions of the Companies Act, 1956. The registered office of the Company was situated at D-5/14, 2nd Floor, Cosmos Floors, ARDEE City, Near ARDEE School Gurgaon, HR 122001, India. The authorized capital as well as paid up capital of the Company was Rs.100000/-. A Copy of Master Data of company has been enclosed as Annexure-I with the report.
- (ii) As per the available records on MCA 21 portal, the last Directors of the Company were Neha Bhardwaj, R/o G1/1033a, Road No.29, Phase-3, Bhiwadi, 301019, Rajasthan, India and Gaurav Kishore Bhardwaj, R/o 534/2a, Ghatal Mehniawas, Maheshwari, Rewari, 123106, Haryana, India.
- (iii) As per Memorandum of Association of the company, the main objects of the company were *"To engage in the business of engineering, contracting and constructions including the design, manufacture, construction, erection, alteration, repair and installation of plants, buildings, structure, ways, works, systems and mechanical, electrical and electronic machinery, equipment, apparatus and devices etc."*

- (iv) The company was incorporated on 11.09.2013 and Company has not submitted any documents to RoC since Financial Year ended on 31.03.2016, before it was considered to be struck off. Moreover, no subsequent documents had been filed by the company with the RoC to obtain the status of a "Dormant Company" under section 455 of the Companies Act, 2013. Hence, this office had reasonable cause to believe that the company was not in operation and therefore, the name of the company was considered for striking off from the Register of Companies.
- (v) The office of RoC issued the notice in the form STK-1 on 20.07.2019 under section 248(1) of the Companies Act, 2013 intimating the company and the directors of the company about the aforesaid defaults. The notice STK-1 was sent to the Company i.e. Khatushyam Engineers Private Limited along with its Director namely Neha Bhardwaj and Gaurav Kishore Bhardwaj on 08.05.2019 and 10.08.2019 respectively through BNPL (Book Now Pay later) service of Department of Post vide ED237863733IN, ED237863747IN and ED237863755IN. The copy of notice has been enclosed as Annexure-II with the RoC report.
- (vi) Thereafter, the public notice in form STK-5 was issued for 9,421 companies containing name of the subject company published on the website of Ministry of Corporate Affairs on 09.08.2019.
- (vii) Thereafter, the name of the company was struck off as per the provision of Section 248(1)(c) of the Companies Act, 2013 read with Rule 9 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 vide notice in STK-7 dated 29.10.2019 published in official Gazette.

(viii) The action of striking off of the present Company was legal and justified, as the Company was not carrying on any operations for a period of two immediately preceding financial years (as indicated by the conduct of company non-filing of the financial statements for two or more years before the date of strike off). The following status of revenue from operations, audited financial statements, banks statements and income tax return has been submitted in the RoC report:

Sr.No.	Particulars	Remarks
1.	Revenue From Operations.	As per Profit & Loss A/c attached for the financial year with Petition at page 68-115: F.Y. 2016-17 Rs.65,11,430/- F.Y. 2017-18 Rs.55,31,412/- F.Y. 2018-19 Rs.90,41,402 F.Y. 2019-20 Rs.1,19,77,870/-
2.	Audited Financial Statement	Submitted with Petition for the Financial Year 2016-17, 2017-18, 2018-19 and 2019-20
3.	Bank Statement	Submitted with Petition for the period of 01.04.2019 to 13.02.2020.
4.	Income Tax Return	Acknowledge Copy of ITR submitted with Petition for the following Assessment Year: A.Y. 2020-21 showing NIL as tax paid A.Y. 2019-20 showing Rs.145047/- as tax paid A.Y. 2018-19 showing Rs.64876/- as tax paid A.Y. 2017-18 showing Rs.60910/- as tax paid (Note: No previous assessment year's return provided)

6. The RoC in its report has made the following prayer:

- (a) To direct the petitioners to prove that the struck-off Company was carrying on business & was in operation at the time of strike off.
- (b) To issue directions to the petitioners to file all the pending Annual Returns and Balance Sheets of the Company with the RoC within such time as may be specified.
- (c) To award cost in favour of the RoC, as the Company deliberately failed to file its Statutory Returns with the RoC under the Companies Act, 2013.

(d) To pass such other order or orders as the Tribunal may deem fit and proper.

INCOME TAX DEPARTMENT REPORT

7. The Income Tax Department in its report filed vide Diary No. 00665/4 dated 05.10.2023 has enclosed the report of Sh. Rajiv Bhatia, Income Tax Officer, Ward 2(2), Gurugram dated 10.08.2023, wherein it has been noted that there are no dues/ demand pending in this case and that there is no objection to the proposal. The said report is reproduced below:

2. In this regard, it is submitted that M/s Khatushyam Engineers Pvt. Ltd. (the company), D-5/14, 2nd Floor, Cosmos Floors, Near Ardee School, Ardee City, Gurgaon, 122001, Haryana having PAN AAFCK3133L and is assessed to tax with ward-2(2), Gurugram. The report with respect to M/s Khatushyam Engineers Pvt. Ltd. (PAN: AAFCK3133L), is submitted as under:-

(i). Details of ITR filed by the company:-

Sl. No.	Particulars	A.Y.	Date of Filing of Return	Return of Income (in Rs.)	Deemed Income (in Rs.)	Refund (In Rs.)
1.	Details of ITR filed by the company	2022-23	07.11.2022	NIL	-	9,170/-
		2021-22	30.03.2022	1,04,918/-	1,49,918/-	1,08,600/-
		2020-21	12.02.2021	1,73,440/-	2,50,679/-	NIL
		2019-20	21.10.2019	1,05,660/-	-	96,350/-
		2018-19	27.09.2018	1,69,900/-	-	21,130/-
		2017-18	27.11.2017	1,56,180/-	-	14,260/-
		2016-17	20.11.2016	NIL	-	9930
2.	Whether any dues are pending	As per data available, no dues/demand are pending in this case.				
3.	Whether any proceedings are pending	No proceedings pending in this office i.e. Jurisdiction Ward-2(2), Gurugram. Case may be pending in NcFAC which cannot be assessed/viewed by this office.				
4.	Whether transaction of disproportionate value were under taken by the company	As per the details available on e-filing portal, in accordance with the latest ITR filed by the assessee for the AY 2022-23, it is noticed that the company had shown total assets of Rs. 23,19,492/- and long term borrowings of Rs. 19,20,134/- . Gross receipts of the company was Rs. 4,58,344/- . Similarly, for the AY 2021-22, total assets of the company was Rs. 48,79,376/- and long term borrowings was Rs. 21,03,443/- . Gross receipts of the company was Rs. 1,19,79,347/- .				
5.	Whether huge cash deposits are found in their account	-				
6.	Whether company's bank accounts have been used for money laundering and tax evasion	-				

in view of above discussion, this office has no objection to the proposal.

8. The appellant vide order dated 20.02.2023 was directed to furnish an affidavit to the effect that at the time of striking off, the company was in operation and was in running business. The Appellant has filed the compliance affidavit vide Diary No.

01285/02 dated 02.06.2023, vide which it is submitted that as per audited financial statements, the revenue from operations of the Company as on 31.03.2017, 31.03.2018, 31.03.2019 and 31.03.2020 were Rs.65.11 lakh, Rs.55.31 lakh, Rs.90.41 lakh and 119.77 lakh respectively and at the time of striking off i.e. 29.10.2019, the appellant company was having running business and was carrying out its business operations at its registered office.

DIRECTIONS

9. 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:

- (i) The RoC, being Respondent No. 1 herein, subject to payment of costs of ₹1,00,000/- (Rupees One Lakh only) to be paid by the representative shareholder/ director of the company in favour of “Prime Minister's National Relief Fund (PMNRF)”, is directed to restore the original status of the 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 company from ‘struck off’ to ‘active’.
- (ii) The appellant is directed to deliver a certified copy of this order to the RoC, within thirty days of the receipt of this order.
- (iii) 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.

- (iv) The appellant is directed to file all the pending documents including all the due annual returns and balance sheets of the Company with the RoC 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.
- (v) 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.
- (vi) 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.

10. The Company Appeal No. 8/Chd/Hry/2021 is allowed. The case papers and folders may be consigned to the Record Room.

11. 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