

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

CP No. 51/Chd/Hry/2023
Under Section 252(3)
read with Section 248 of the
Companies Act, 2013

IN THE MATTER OF:

1. Mr. Shameem Khan

Having registered address at
Ward No. 8, Harijan Colony,
Punhana, Mewat, Haryana,122508

...Petitioner 1

2. Mr. Salman Ali

Having registered address at
Ward No. 8, Harijan Colony,
Punhana, Mewat, Haryana,122508

...Petitioner 2

3. Starsworld Music Entertainment Private Limited

Having Registered Office at
786, Near Bharat Petrol Pump,
Tairu Road, Nuh, Mewat, Haryana-122107

...Petitioner 3

Versus

1. Registrar of Companies, NCT of Delhi & Haryana

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

...Respondent No. 1

2. Department of Income Tax,

Udyog Vihar Industrial Area, Phase-5
Gurugram-122016

...Respondent No. 2

Order delivered on: 07.05.2024

Coram: HON'BLE DR. P.S.N PRASAD, MEMBER (JUDICIAL)

HON'BLE MR. UMESH KUMAR SHUKLA, MEMBER (TECHNICAL)

Present through Video Conferencing:

For the Appellant : Mr. Sumit Kumar, Advocate

Per: Dr. PSN Prasad, Member (Judicial)

Umesh Kumar Shukla, Member (Technical)

ORDER

This Company Petition has been filed by the Appellant Company- M/s Starsworld Music Entertainment Private Limited and its shareholders Mr. Salman Ali and Mr. Shameem Khan under section 252(3) read with section 248 of the Companies Act, 2013 for restoration of the name of the struck-off company in the Register of Companies, maintained by Respondent No. 1 i.e. Registrar of Companies, NCT of Delhi & Haryana. It is stated that the name of the Appellant Company was struck off on 27.01.2023. The copy of the notice of striking off is attached with the petition as Annexure A-5. The copy of the Master Data of the Appellant Company is attached with the petition as Annexure A-11.

2. The petitioner company submitted that its registered office is in Mewat, Haryana, and its name has been struck off due to failure to file the declaration regarding the commencement of business under section 10A of Companies Act, 2013 and also failure to file their returns and documents with Registrar of Companies.

3. It is further submitted that the main objects of petitioner company, as stated in the Memorandum of Association is as below-

“To build, construct and erect studios, theaters and cinema halls, Music halls, Open air Theaters and other places of entertainment and to carry on all or any of the business of theaters, Music halls, cinema, Picture Palace, Film Producing Studio and to promote, produce, represent, conducting, performance and exhibition of cinematograph or stereoscopic or coloured or bioscope, pictures, films, operate as & stage plays and other entertainment as the Company may from time to time think fit.”

4. The petitioner Company is a Private Company limited by Shares incorporated on 13th January, 2020 vide CIN No. U74999HR2020PTC084704 under the name and style of Starsworld Music Entertainment Private Limited. The copy of its Certificate of Incorporation, Memorandum of Association and Articles of Association are attached with the petition as Annexure A-1 and Annexure A-2 respectively. The authorized as

well as paid up share capital of the company is Rs.1,00,000/- (Rupees one lakh only) divided into 10,000 (Ten Thousand) equity shares of Rs.10/- (Rupees ten only). There are two shareholders as well as directors namely Shameem Khan (Petitioner no. 1) and Salman Ali (Petitioner no. 2) each having 5000 shares as per the list of shareholders attached as Annexure A-3 of the petition.

5. It is also stated in the petition that the Registrar of Companies (ROC), NCT of Delhi and Haryana, i.e. the Respondent No. 1, had issued Notice No. ROC-DEL/248(1)/STK-5/2022/5739 dated 28.09.2022 pursuant to sub-section (1) of Section 248 of the Companies Act 2013 and Rule 9 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016. The copy of the notice in form STK-5 is attached as Annexure A-4 of the petition. The reason mentioned by the ROC for striking the name of the Company in form STK-5 is stated below-

“The company has not filed declaration regarding the commencement of business required to be filed under Section 10A within 180 days from the date of incorporation.”

6. The Registrar of Companies, NCT of Delhi and Haryana had pursuant to sub-section (5) of section 248 of the Companies Act 2013 and rule 9 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 removed the name of the petitioner company from the register of the companies and the said company stands dissolved pursuant to the notice of striking off and dissolution in STK-7 in order no. ROC-DEL/248(1)7546402022 dated 27 January 2023.

7. The petitioner company submitted that they had without any mala fide motive was unable to file its Annual Return and Balance Sheet for the financial year ending on 31st March, 2021 and 31st March, 2022, and has also failed to file declaration

regarding the commencement of business under Section 10A of Companies Act, 2013 inadvertently, however the subscribers of memorandum of association has duly paid the subscription money.

8. It is further stated in the petition that the petitioner company had called and convened the company's Annual General Meeting for the financial year ending on 31st March, 2021 and 31st March 2022 on 31st December,2021 & 30th September 2022, respectively within the time limit provided under the Companies Act, 2013 and in compliance with all the relevant provisions of the Companies Act, 2013. The Audited financial statement for the financial year ending 31st March, 2021 and 31st March, 2022 had been duly approved by the shareholders at the Annual General meeting held on 31st December, 2021 & 30th September 2022, respectively. A copy of the financial statement is enclosed and marked as Annexure A-6 (colly) of the petition.

9. The petitioner company submitted that it was operational at the time of strike-off its name from the Register of Companies. In support of their contention, the petitioner company submitted that it was continuously paying the Goods and Services Tax on its supply of services and in support, the GSTR-1 of company along with invoices issued in the name of the company and copy of agreements entered by the company are enclosed at annexure A-12, A-13 and A-14 respectively of the petition. The bank statement of the company since incorporation till January 2023 is also enclosed as Annexure A-10 of the petition.

10. Further the petitioner company submits that as per section 252(3) of the Companies Act, 2013, the petitioner company may file a petition to the tribunal within the period of 20 years from the date of its name being struck off from the register of

companies, to get its name restored in the register of companies maintained by Registrar of Companies i.e. Respondent no. 1.

11. It is also submitted by the petitioner company that the petitioner had enquired from the Registrar of Companies that the name of the petitioner company is still available and no other company has been registered with the said name. Further, the name cannot be allotted to any other person/ company for the next 20 years by the Registrar of Companies from the date of its name being struck off from the register of companies i.e. 28th January, 2023 in the present case.

12. Notices were issued to the Registrar of Companies and the Income Tax Department vide order of this Tribunal dated 09.05.2023. The Affidavit of Compliance was filed by the petitioners vide diary No. 01254/2 dated 08.06.2023. The Registrar of Companies has submitted a report by post dated 27.07.2023 and same is reproduced below briefly,

“4. That the company was incorporated on 13.01.2020 and has failed to file Annual Return and Balance Sheet since its incorporation. Furthermore, it has failed to file a declaration within a period of 180 days of the date of incorporation of the company in e-form INC 20A with the registrar that every subscriber to the memorandum has paid the value of the shares agreed to be taken by the Petitioner Company. Moreover, no subsequent documents had been filed by the company with this office to obtain the status of a “Dormant Company” under Section 455 of the Companies Act, 2013. Hence, in terms of section 248(1) (d) the name of the company was considered striking off from the Register of Companies.

5. That this office issued the notice in the form of STK-1 on 07.07.2022 under Section 248(1)d of the Companies Act, 2013 intimating the company and the directors of the company at their registered office about the aforesaid defaults. Subsequently, this office also issued public notice for the same in the form of STK-5 dated 28.09.2022. Thereafter, the name of the company was struck off as per the provision of Section 248(1)(d) 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 the form of STK-7 dated 27.01.2023.

6. That the Respondent most respectfully submits that the action of striking off of the present Company was legal and justified, as the company failed to comply with the provisions of the section 248(1)(d) of the Companies Act, 2013 within 180 days of its incorporation.

13. The Income Tax Department filed its report vide Diary No. 01254/4 dated 21.07.2023, wherein it has submitted that the petitioner company has not filed any

return of income and as per ITD system, there is no outstanding demand against the said company.

14. After considering the submissions of the learned counsel on behalf of the petitioner and on a perusal of the report of Registrar of Companies, NCT of Delhi and Haryana, Report of the Income Tax Department, and other records submitted by the petitioners, 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.

15. Accordingly, in the exercise of the powers conferred on the Tribunal under Section 252 of the Companies Act, 2013, the petition is allowed on the following terms:

- a. The Registrar of Companies, NCT of Delhi and Haryana, subject to payment of Rs.1,00,000/- to be paid to Prime Minister 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 the status of the appellant company from 'struck off' to 'active'.
- b. The petitioners are directed to deliver a certified copy of this order to the Registrar of Companies, NCT of Delhi and Haryana, within thirty days of the receipt of this order.
- c. The petitioner company is directed to file all pending statutory documents, including annual accounts, annual returns, and balance sheet along with form INC 20A together with prescribed fees/additional fees/fines as decided by the Registrar of Companies, NCT of Delhi and Haryana, within 45 days from the

date on which its name is restored on the Register of Companies maintained by the Registrar of Companies, NCT of Delhi and Haryana.

- d. On such delivery and after due compliance with the above directions, the Registrar of Companies is directed to publish the order in the official gazette under his office, name and seal.
- 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 Registrar of Companies, NCT of Delhi and Haryana, to take appropriate action in accordance with the law for any other violation/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 may take the necessary action as per law for the non-filing or belated filing of the Income Tax Returns of the Company for any of the assessment years and also for recovery of outstanding demand if any.

16. The appeal bearing CP No. 51/Chd/Hry/2023 is allowed and the prayers made in the appeal are hereby granted.

17. The Registry is directed to send e-mail copies of the order forthwith to all the parties including the counsels.

Sd/-
(Umesh Kumar Shukla)
Member (Technical)

Sd/-
(Dr. P.S.N Prasad)
Member (Judicial)

May 7, 2024
Vanshika