

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
COURT – VI

Item No. 811
26/252/ND/2023

IN THE MATTER OF:

M/s. Sadhvi Securities Pvt. Ltd. and Anr

...Appellants

Vs.

ROC

...Respondent

Order under Section 252 of Companies Act, 2013.

Order delivered on 14.09.2023

Coram:

Shri. Bachu Venkat Balaram Das, Hon'ble Member (Judicial)

Shri. Rahul Bhatnagar, Hon'ble Member (Technical)

ORDER

Order pronounced in open Court vide separate sheets.

26/252/ND/2023 stands dismissed.

SD/-

SD/-

(RAHUL BHATNAGAR)

(BACHU VENKAT BALARAM DAS)

MEMBER (TECHNICAL)

MEMBER (JUDICIAL)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENCH-IV, NEW DELHI
Appeal No. 26/252/ND/2023**

IN THE MATTER OF:

1. M/S. SADHVI SECURITIES PRIVATE LIMITED

At: 13/34 W.E.A Karol Bagh, New Delhi 110005

2. M/S. ELECON SECURITIES PRIVATE LIMITED

At: C-25/5, Connaught Place, New Delhi - 110001

...PETITIONERS

Versus

1. REGISTRAR OF COMPANIES, DELHI & HARYANA

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

.... RESPONDENT

Present:

For the Appellant: Mr. Arun Kumar Gupta

ORDER DELIVERED ON: 14.09.2023

CORAM:

SHRI. BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

SHRI. RAHUL BHATNAGAR, MEMBER (TECHNICAL)

ORDER

PER: RAHUL BHATNAGAR (MEMBER TECHNICAL)

1. This Appeal has been filed by the Appellants invoking the provisions of Section 252 (3) of the Companies Act, 2013 (the Act) for restoration of the name of the Appellant Company No. 1 in the Register maintained by the Registrar of Companies (RoC), NCT of Delhi & Haryana.
2. The Appellant Company No. 1 was incorporated under the Companies Act, 1956 on 15.02.1995 vide CIN: U74899DL1995PTC065435. The Authorised share capital of the Appellant No. 1 Company is Rs. 2,00,00,000/- (Rupees Two Crore) divided into 20,00,000 number of equity shares of Rs. 10/- each and the Issued, Subscribed & Paid Up Capital of the Company is Rs. 1,87,60,000/- (Rupees One Crore Eighty-Seven Lakh Sixty Thousand) divided into 18,76,000 number of equity shares of Rs. 10/-.
3. That the Appellant Company No. I was defunct and inoperative since 2009. On 30.07.2018, the Members of the Appellant Company No. 1 passed a resolution and approved for the Striking off of the name of the Company from the Register of Companies. Accordingly, the Appellant Company No. 1 filed an application to the Respondent under section 248(2) of the Companies Act, 2013 for removal of its name from the Register of Companies maintained by the Respondent. Subsequently, the Respondent had initiated proceedings under Section 248 of the Companies Act, 2013,

for the purpose of striking off the name of the Company from the Register maintained by the Respondent on the basis of the application made by the Appellant Company No. 1 and issued a Public Notice regarding striking off the name of the Company vide STK Form -7 dated 08.03.2019.

4. That on 29.08.2021, the Appellant Company No. 1 received a Notice from Income Tax Department under section 221(1) of the Income Tax Act, 1961 related to pending Income-tax demand pertaining to F.Y. 2013-14. To represent the company and to get relief from the Income-tax demand, an appeal is to be filed before Income Tax Appellate Tribunal ("ITAT")/ Delhi High Court. Therefore, in order to defend the company and make representation before the ITAT/ Delhi High court and to settle the Income-tax demand for on behalf of the Company, the company needs to be re-instated.
5. The Respondent/RoC in their affidavit dated 21.01.2022 filed before the Tribunal submitted that the Hon'ble ITAT held that the appeal filed by the struck-off Company would be maintainable before it. Hence the very basis on which the revival is sought by the appellant is misconceived. In any case the company does not want to start its business operations and accordingly the company may not be revived.
6. The Respondent/RoC has relied on the judgement of Hon'ble ITAT in the matter of *M/s. Dwarka Portfolio Pvt. Ltd. Vs Assistant Commissioner of New Income Tax , Central Circle-29, New Delhi* dated 27.05.2022 held as follows:

Though the Assessee company has been struck off under Section 248 of the Companies Act 2013, in view of sub-sections (6) and (7) of Section 248 and Section 250 of companies Act 2013, the Certificate of Incorporation issued to the Assessee company cannot be treated as cancelled for the purpose of realizing the amount due to the company and for payment or discharge of the liability or obligations of the company, we are of the opinion that the Appeal filed by the struck off Assessee Company or Appeal filed by the Revenue against the struck off Company are maintainable. Therefore, by rejecting the contention of the Ld. DR, we hold that the present Appeal filed by the Assessee (struck-off company) is maintainable and the same has to be decided on merit.

- 7.** We have considered the plea of the Appellant and the representations of RoC. The Appellant is seeking restoration of the name of the Appellant Company in the register as maintained by RoC in order to defend the company and make representation before the ITAT/ Delhi High court and to settle the Income-tax demand for and on behalf of the Company. Therefore, in light of the above judgement, there appears to be no need to restore the Company as it has been established that even a struck off Company can make representation before the ITAT/ Delhi High court.
- 8.** The application is dismissed and disposed off accordingly. Let a copy of the order be served to the parties.

SD/-

(RAHUL BHATNAGAR)

MEMBER (TECHNICAL)

SD/-

(BACHU VENKAT BALARAM DAS)

MEMBER(JUDICIAL)