IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-V
Appeal No.32/252/ND/2022

IN THE MATTER OF:

RIZA DIESELS AND MACHINES PVT LTD
REGISTERED OFFICE: H-49/14, GALIB APTT, IIIRD FLOOR,
BATLA HOUSE, JAIMA NAGAR, OKHLA,
NEW DELHI-110025

...APPLICANT COMPANY

VS

1. **REGISTRAR OF COMPANIES,**
   NCT OF DELHI AND HARYANA,
   4TH FLOOR, IFCI TOWER,
   61, NEHRU PLACE, NEW DELHI-110019

...RESPONDENT NO. 1

2. **UNION OF INDIA, MINISTRY OF FINANCE,**
   DEPARTMENT OF REVENUE,
   THROUGH DEPARTMENT OF INCOME TAX,
   C/o PRINCIPAL CHIEF COMMISSIONER OF INCOME TAX
   C.R. BUILDING, I.P. ESTATE, NEW DELHI

...RESPONDENT NO. 2

Order Delivered on: 29.09.2022

CORAM:
SHRI P.S.N PRASAD, MEMBER (JUDICIAL)
SHRI RAHUL BHATNAGAR, MEMBER (TECHNICAL)

PRESENT-

For the Appellant: S.S Bhati, PCS and Advocate Shobhan Mahanti

For the I.T. Deptt.: Abhishek Mehra Sr. SC and Pratyksh Gupta Jr SC with Prerna Goyal

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ORDER

AS PER P.S.N. PRASAD, MEMBER (JUDICIAL)

1. This Appeal has been filed by Riza Diesels and Machines Pvt Ltd invoking the provisions of Section 252 of the Companies Act, 2013 for restoration of the name of the Appellant Company in the register maintained by the Registrar of Companies, NCT of Delhi & Haryana.

2. As per the averments, Riza Diesels and Machines Pvt Ltd was incorporated on 05.12.2005 as a Private Limited Company and has its registered office at H-49/14, Galib APTT, IIIRD Floor, Batla House, Jaima Nagar, Okhla, New Delhi-110025 having CIN No. U31909DL2005PTC143305. The business of the appellant company is to carry on the business as buyer, sellers, assemblers' traders, dealers, importers, exporters, products, retailers, wholesalers, stockiest, manufacturers, designers, consultants and traders for all types of engines, diesel engines, generator sets, belt conveyors, screw conveyors, elevators, etc.

3. A sweeping action was initiated by the ROC at the instance of MCA in striking off the names of several companies who had failed to file their Statutory Returns. The RoC issued Public Notice dated 27.04.2017 in Form STK-5 inviting objections to the proposed removal/striking off of the names of the Applicant company from the Register of the Companies. The Applicant Company and its Directors were not able to send the representation in response to the aforesaid Public Notice. Consequently, its name was struck off by the Respondent No. 1 from the Register of Companies under Section 248 of the Companies Act, 2013 vide notification dated 30.06.2017.

4. The Appellant is ready to submit its Financial Statements and Annual Returns before the Respondent No. 1.

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5. The Appellant submits that the Appellant Company has been in continuous business operation, has been regular in preparing its annual return and balance sheets and filing income tax returns with the competent authorities and has certain assets which necessitate restoration of its name in the record of ROC. In order to corroborate this submission the appellant has placed before us the following evidence:

i. Copy of Audited Financial Statements for the periods ended on 31.03.2017, 31.03.2018 and 31.03.2019.

ii. Copy of bank statement for the FY 2017-18 and for the period 01.04.2017 to 30.06.2017.

iii. Copy of documents of property of the Applicant Company.

iv. Copy of acknowledgement for filing of the ITR for the Assessment year 2018-19, 2019-20, 2020-21 and 2021-22.

v. Copy of Audited Balance Sheet reflecting Revenue from Operations at Rs. 6,17,420/- for the Financial Years ending 31st March, 2019. It has current and non-current assets and liabilities including Trade Receivables and Cash and Bank Balances.

6. The Respondent RoC has filed their reply dt. 05.05.2022 and submitted that the Appellant Company has revenue from operations for the Financial Year 2016-17, 2017-18 and 2018-19.

7. Further, the Income Tax Department has also filed its report dt. 25.02.2022 and submitted that there are five demands outstanding for different AYs and no assessment/penalty/prosecution is pending against the Appellant Company.

8. The provisions pertaining to restoration of the name of the company has been provided in Section 252 of the Companies Act, 2013 which includes that, if

it is just and equitable to restore the name of the company in the Registrar of Companies, it may direct the RoC to restore the name in its Register.

9. On perusal of the aforementioned reports, we notice that as per the Profit & Loss Account for the F.Y. 31.03.2019, the Appellant Company has revenue from operations which shows that the company has been in continuous business operation during the preceding two financial years from the date of strike off. Further, the Appellant Company also has an outstanding tax liability which requires recovery and any other consequential proceedings. Therefore, the restoration of the name of the Company to the Register of Companies would be just and equitable and in public interest.

10. The Appellant has been able to satisfy this Bench that it has certain assets which necessitate and justify restoration of its name in the Register of Companies. A step as stringent as what has been taken at least requires an opportunity to the appellant to take remedial measures. Merely to disallow restoration on grounds of its failure to file annual returns would neither be just nor equitable. As per several decisions of various High Courts, it should only be in exceptional circumstances that Courts should refuse restoration where the company has been struck off for its failure to file annual return as that would be excessive or inappropriate penalty for that oversight.

11. Further restoration of the company on the Register of the RoC will also enable the Income Tax Department to recover tax dues of the company in accordance with law.

12. Accordingly, the Appeal is hereby **allowed and the order of Registrar by which the name of the Company was struck off is set aside subject to payment Rs. 50,000/- to be deposited in the account of the Ministry of Corporate Affairs.** The name of the Appellant Company is hereby restored in the Register of the Registrar of Companies (RoC), as if name of the company had

not been struck off, subject to their filing all outstanding documents for the defaulting years as required by law and completion of all formalities, including payment of any late fee or other charges, as required under the law, within one month from the date of this order.

13. The direction for freezing the Bank Account(s) of the Appellant Company, if on this ground, shall consequently be also set aside immediately to enable the company carry out its business operation. Compliance of this order for restoration shall be made by the Respondent with all its consequential effects within one week of compliance by the Appellant.

14. Let the copy of the order be served to the parties.

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RAHUL BHATNAGAR

Member (T)

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P.S.N PRASAD

Member (J)