

IN THE NATIONAL COMPANY LAW TRIBUNAL

SPECIAL BENCH

NEW DELHI

COURT-VI

Appeal No.201/252/ND/2020

IN THE MATTER OF:

N D CLOTHING PRIVATE LIMITED

CIN: U18101DL2011PTC228503

REGD. Office: E73 Greater Kailash Enclave-1,

South Delhi New Delhi- 110048

....Petitioners

VERSUS

THE REGISTRAR OF COMPANIES

...Respondent

Order Delivered on: 30.09.2020

CORAM:

Hon'ble SHRI. P.S.N. PRASAD Hon'ble Member (Judicia)

Hon'ble Ms. SUMITA PURKAYASTHA, Member (Technical)

For the Petitioner: Mr.Ashok Juneja, Advocate.

For the Respondent: Mrs. Sweety Khattar Kumar, AROC.

For the Income Tax: Mrs. Lakshmi Gurung, Sr. St. counsel and Mr. Ankit Singh, Advocate.

Appeal No.201/252/ND/2020

 1

ORDER

SHRI. P.S.N. PRASAD, HON'BLE MEMBER (J)

1. The erstwhile director of N D Clothing Private Limited bearing CIN NO: U18101DL2011PTC228503 has filed the present appeal, invoking the provision of section 252 of the Companies Act, 2013 for restoration of the name of the petitioner company in the register maintained by the Registrar of Companies, NCT of Delhi and Haryana.
2. As per the averments, by Sarda Solvent Extractions Private Limited, is incorporate on 09.12.2011 having its registered office at E-23 Greater Kailash Enclave -01, South Delhi, Delhi- 110048 within the jurisdiction of this Tribunal. The main object of Company is "*to carry out the business of trading, Export, Import of all types of machines*"
3. It is submitted by the appellant that a sweeping action was initiated by the ROC at the instance of MCA in striking of the names of several Companies who had failed to file their Statutory Returns. The appellant had not filed its Annual Returns and balance sheet since 31.03.2016, thereby giving rise to the surmise that the business of the company was not in operation. Consequently, its name was struck off by the Respondent from the Register

of Companies under Section 248 of the Companies Act, 2013, upon taking steps in accordance with law and issuing a notification in the Official Gazette. The names of the effected companies were posted on its website.

4. The appellant has submitted that they could not file the balance sheet and annual return since the F.Y. ended on 31.03.2016 along with relevant documents with the ROC. The appellant has further submitted that non-Compliance in filings of financial statements with registrar of Companies were done without any mala fide intention on the part of the applicant. Further the applicant has submitted that the Company has filed Income Tax Returns for the FY 2017-2018 to 2019-2020.

5. In order to sustain the plea for restoration, the petitioner has placed before us the following documents:

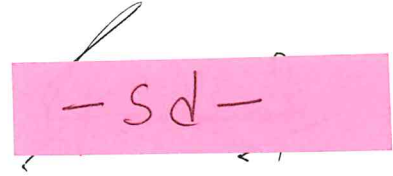
- i. Copies of Auditor's Report and balance sheet for the financial year 2007-2008 to 2016-2017.
- ii. Copy of Income Tax returns for the F.Y 2017-2018 and 2019-2020.
- iii. Copy of TDS returns for the Financial year 2017-2018, 2018-2019 and 2019-2020.
- iv. Copy of Bank statement of applicant company bearing account no. 077800C200000014 which shows day to day transactions.

6. The Income Tax Department has filed its reply in which it has been submitted that there is an outstanding demand pending against the applicant Company for Asstt. Year 2017-2018-2019-2020.
7. The applicant company has filed an affidavit in which it has been submitted that the Income Tax Department has created erroneous demands so the company had filed replies for deletion of respective demands by the AO after due verification and same are under process with the Income Tax Department. Further the company is undertaken to deposit all undisputed demands immediately after receive the reply from the department.
8. The provisions pertaining to restoration of the name of the company have been provided in Section 252 of the Companies Act, 2013 and the same envisage that if the Tribunal is of the opinion that the removal of the name of the company from the Register of the Companies is not justified in view of the absence of any of the grounds on which the order was passed by the Registrar, it may order restoration of the name of the company in the Register of Companies.
9. Taking into consideration the interest of Revenue as the demand for the Asstt. Year 2017-2018-2019-2020 is pending against the applicant Company as well as in the interest of stakeholders including the shareholders who have sought for the restoration of the name of the

Company in the register being maintained by RoC and in view of the circumstances elucidated above and the respondent will not be prejudiced and in the absence of any adverse consequences being demonstrated by the statutory authorities to whom notices had been issued, the Appeal is allowed subject to payment of costs of Rs. 50,000/- to the Prime Minister Cares Fund. The restoration of the petitioner company's name in the Register will be 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 which are leviable by the respondent for the late filing of statutory returns. The name of the petitioner company shall then stand restored in the Register of the Registrar of Companies, as if the name of the company had not been struck off in accordance with Section 248(5) of the Companies Act, 2013 with all consequential effects and benefits.

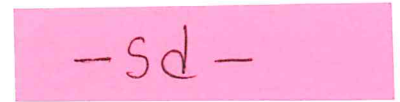
10. The direction for freezing the Bank Account(s) of the appellant company, if on this ground, shall consequently be also set aside immediately to enable the company carry out its business operation. Compliance of this order for restoration shall be made by the respondent with all its consequential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

11. The petition is disposed off accordingly.
12. Let the copy of the order be served to the parties.

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(SHRI P.S.N PRASAD)

MEMBER (J)

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(MS. SUMITA PURKAYASTHA)

MEMBER (T)