

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT -V**

COMPANY APPEAL NO.198/252/ND/2023

*Under section 252(3) of the Companies Act, 2013 read with Rule 87A of the
National Company Law Tribunal (Amendment) Rules, 2017*

IN THE MATTER OF:

1. OM FLEXPACK LIMITED

Having registered office at: G-5, Taj Apartments 2
Factory road Raj Nagar Ring N Delhi-29
CIN NO. U93000DL2009PTC196737.

2. ATUL KUMAR AGARWAL

S/O Mr. Sidh Nath Agarwal,
Address: 85/73 Laxmi Purva Kanpur
Uttar Pradesh India 208003

.... Appellants

Versus

1. REGISTRAR OF COMPANIES

NCT of Delhi & Haryana.
IFCI TOWER, 4TH FLOOR,
61, NEHRU PLACE DELHI-
110019, INDIA

2. INCOME TAX OFFICE

Address: C.R. Building,
I.P. Estate New Delhi
Delhi- 110002

.... Respondents

Order Delivered on: 02.04.2024

CORAM:

SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)
DR. SANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant : Ms. Sheetal Sharma
For the Respondent:
For the ROC : Ms. Shankari Mishra, Adv.
For the IT Dept : Mr. Ruchir Bhatia, Sr. Sr. Counsel, Mr. Pratyaksh
Gupta, Jr. St. Counsel with Mr. Ashish Kumar, Adv.

ORDER

PER: MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)

1. The present appeal has been filed by Atul Kumar Agarwal on behalf of the Company i.e. Om Flexpack Limited (for brevity "Appellant Company") under Section 252(3) of the Companies Act, 2013 for restoration of name of the company, which was struck off by the Registrar of Companies, NCT of Delhi and Haryana (Respondent/RoC) vide Public Notice ROC-DEL/248(1)/STK-5/2019/3789 dated 09.08.2019.
2. Brief facts of the case, as mentioned in the instant company appeal, which are relevant to the issue in question, are as follows: -
 - a) That the Appellant Company i.e OM FLEXPACK LIMITED having CIN U74950DL1986PLCO23523, which was incorporated on 04.03.1986 under the provisions of the Companies Act, 1956. The Registered office of the Company was situated at G-5, Taj Apartments 2, Factory Road, Raj Nagar, Ring Road, New Delhi-29. The Authorized Capital of the company was Rs. 50,00,000/-. The Paid up Capital of the company was Rs. 9,56,000/.
 - b) That the Appellant Company has not filed the E-forms pertaining to "Audited Balance Sheet, Statement of Profit and Loss Account with the report of Auditors' and Directors' and Annual Returns since 2016 to the Registrar of Companies within the stipulated time as prescribed under Companies Act, 2013. Moreover, no subsequent documents had been filed by the company with RoC to obtain the status of a "Dormant Company" under Section 455 of the Companies Act, 2013.
 - c) That pursuant to such failure, the RoC vide Notice No. ROC-DEL/248(1)/STK-5/2019/3789 dated 09.08.2019, the name of the Company was struck off from the Register of Companies.
 - d) Appellant Company submitted that all the necessary documents including the Balance sheet, Profit and Loss account along with Statutory Auditors Reports for the period of noncompliance i.e 2015-2016 to 2021-2021 are ready for submission by the Appellant Company before the respondent.

- e) Appellant Company submitted that in case, the name of the Applicant Company is restored, the Applicant Company would be able to continue the work which would inter-alia, benefit the Government in terms of Income Tax, Goods and Service Tax and other taxes. Therefore, restoration of the name of the Applicant Company would not only be beneficial to the Shareholder of the Applicant Company but also the Government and shall be in public interest.
- f) That the present Appeal is for Restoration of the name of the Company in the Register of Companies maintained by the Registrar of Companies, NCT of Delhi & Haryana.
3. This Tribunal vide order dated 04.08.2023 directed to appellant to issue notice to the Respondents i.e RoC and Income Tax Department. Pursuant to notice, Registrar of Companies, NCT of Delhi and Haryana (Respondent) filed its reply dated 15.06.2023 to the instant appeal.
4. The Registrar of Companies (ROC) in its reply dated 15.06.2023 submits that the Appellant Company was incorporated on 04.03.1986 and the last Annual Return and Balance Sheet submitted by the company to RoC, before it was considered to be struck off, pertain to the financial year that ended on 31.03.2016. 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.
5. Further, Registrar of Companies (ROC) submits that 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.
6. As mentioned in the order dated 06.03.2024, the RoC stated that subject to filing of necessary Returns by the company, they have no objection if, the company is revived. The Appellant in the present Appeal Petition has undertaken to file all outstanding statutory documents i.e. the Financial Statements and Annual Returns for the financial years from 2015-2016 to 2021-2021, on restoration of the Company.

7. In compliance of the order dated 05.07.2023, the Income Tax Department through its Ld. Counsel presented on 29.11.2023 before the Tribunal and submitted that they have no objection if, the company name is revived.
8. Heard the Ld. Counsel for the Appellant as well as Ld. Counsel for RoC. Record has been thoroughly perused.
9. The Appellant Company in para 4 of the Appeal memo stated that the accounts have been duly audited by the Statutory Auditors of the Company. Further, stated that all the documents including the Balance sheet, Profit and Loss account along with Statutory Auditors Reports for the period of non-compliance are ready with the Company for submission to the RoC.
10. It is further stated in para 5 of the Appeal memo that the Company is going concern and the Company has also convened its Annual General Meeting 'AGN' regularly. A copy of the balance sheet annexed as Annexure -12 with the present petition.
11. At this juncture, it will be advantageous to examine the requirement of Section 252(3) of the Companies Act, 2013 insofar as grant of relief to the appellant is concerned. The Section 252 (3) of the Act is reproduced below for better appreciation:

“252. Appeal to Tribunal. –

(1)

(2)

(3) *If a company, or any member or creditor or workmen thereof feels aggrieved by the company having its name struck off from the register of companies, the Tribunal on an application made by the company, member, creditor or workmen before the expiry of twenty years from the publication in the Official Gazette of the notice under subsection (5) of section 248 may, if satisfied that the company was, at the time of its name being struck off, carrying on business or in operation or otherwise it is just that the name of the company be restored to the register of companies, order the name of the company to be restored to the register of companies, and the Tribunal may, by the order, give such other directions and make such provisions as deemed just for placing the company and all other persons in the*

same position as nearly as may be as if the name of the company had not been struck off from the register of companies.”

12. In connection with the non-filing of statutory records, it is pertinent to refer to the findings of Hon’ble High Court of Delhi in the matter of **Mace Platronics Pvt Ltd Vs ROC**, reported in **(2010) 104 SCL 277 (Del)**, wherein it was held that:

“When the name of the company was struck off after following the prescribed procedure for non-filing of statutory records, even though the contentions of the company that the officials entrusted with responsibility of filing documents had failed to do so cannot be accepted yet since the company was a running company and the application had been filed in time, the court had power to restore the name of the company.”

13. Hence, upon considering the facts and circumstances of this present petition, it would be “just and proper” to order restoration of the name of the Company in the Register of Companies maintained by the ROC.

14. Accordingly, this Petition is allowed. The restoration of the Company’s name to the Register of Companies maintained by the ROC, is hereby ordered, subject to the following directions namely-

- a) The restoration of the Appellant Company’s name i.e. Om Flexpack Limited is subject to the payment of cost of Rs. 50,000/- (Rupees Fifty Thousand Only) to be paid to the Registrar of Companies, NCT of Delhi and Haryana. The name of the Appellant Company shall then, as a consequence, stand restored to the Register of the Registrar of Companies, as if the name of the company has not been struck off in accordance with Section 248(1) of the Companies Act, 2013.
- b) The Registrar of Companies, NCT of Delhi & Haryana (Respondent) is directed to restore the original status of the Appellant company as if the name of the company has not been struck off from the Registrar of Companies with resultant and consequential actions like changing status of the company from ‘struck off’ to “Active”.
- c) The Appellant Company is directed to file all pending statutory document(s) including Annual Accounts and Annual Returns in default along with prescribed fee/additional fee/fine as prescribed under the Companies Act,

2013 within 45 days from the date on which its name is restored on the Register of Companies by the ROC, NCT of Delhi and Haryana (Respondent). Consequently, thereupon the bank account/s if any subject to freeze shall get de-frozen and to be operated by the company.

- d) The Appellant company is directed to submit a certified copy of this order to ROC, NCT of Delhi and Haryana within thirty days (30) of the receipt of this order.
- e) This order is confined to the violations, which ultimately leads to the impugned action of striking of the name of the Appellant Company, and it will not come in the way of Respondent to take appropriate action(s) in accordance with law, for any other violations/offences, if any, committed by the Appellant company prior or during the striking off of the Appellant Company.
- f) Resultantly, the present appeal i.e. **Company Appeal No. 198/252/ND/2023 stands allowed** with aforesaid terms.
- g) Let the copy of the order be served to the parties.
- h) File be consigned to records.

Sd/-

**(DR. SANJEEV RANJAN)
MEMBER (T)**

Sd/-

**(MAHENDRA KHANDELWAL)
MEMBER (J)**