

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-V
Appeal No.200/252/ND/2022

IN THE MATTER OF:

**INCOME TAX OFFICER, WARD 9(1),
NEW DELHI
C. R. BUILDING, I. P. ESTATE,
NEW DELHI- 110002**

...APPELLANT

VERSUS

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

...RESPONDENT NO. 1

**2. FREAK BUILDCON PRIVATE LIMITED
C-17, Ground Floor, Guru Nanak Pura,
Laxmi Nagar, Delhi 110092**

...RESPONDENT NO. 2

**3. RAKESH DUTT, DIRECTOR
C-17, Ground Floor, Guru Nanak Pura,
Laxmi Nagar, Delhi 110092**

...RESPONDENT NO. 3

**4. MOHIT SHARMA, DIRECTOR
C-17, Ground Floor, Guru Nanak Pura,
Laxmi Nagar, Delhi 110092**

...RESPONDENT NO. 4

Order Delivered on: 07.02.2024

CORAM:

SHRI MAHENDRA KHANDELWAL,HON'BLE MEMBER (JUDICIAL)

DR. SANJEEV RANJAN,HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Appellant :Mr. Puneet Rai, Sr. St. Counsel with Mr. Nikhil
Jain, Advs.

For the RoC : Ms. Shankari Mishra, Ms. Niharika Tanwar, Advs.

ORDER

PER: DR. SANJEEV RANJAN, MEMBER (TECHNICAL)

1. This appeal has been filed by Income Tax Authority invoking the provisions of Section 252 of the Companies Act, 2013 for restoration of the name of the Respondent No. 2 Company, Freak Buildcon Private Limited, in the Register of Companies maintained by the RoC, Respondent No. 1.
2. The name of the Respondent Company appeared in Serial No. 11 of the newspaper publication and the next date of hearing i.e., 17.02.2023 was mentioned in the public notice.
3. Vide Proceedings initiated by the office of the RoC, names of several companies were struck off for want of filing Statutory Returns. Respondent No. 2 Company, which had not filed any Return or Financial Statement, was duly struck off from the Register of Companies vide STK-7 dated 29.10.2019.
4. This Tribunal vide its order dated 19.09.2022 directed the appellant to issue notice to the all the Respondents No. 1 to 4. The service was duly affected via email and speed post. The respondents (other than ROC), failed to appear and respond to the notice. On failure of the Respondents No. 2 to 4 to appear, this Tribunal vide order dated 20.10.2022, directed the appellant to serve notice upon the respondents through substituted service by paper publication. Service was duly affected via publication in newspapers dated 15.02.2023 on the Respondent Company. The proof of service via publication was filed vide an Affidavit of Service dated 16.02.2023.
5. Despite substituted service notices, other than the RoC, none appeared on behalf of the Respondent Nos. 2 to 4 to oppose the prayer made by the Appellant. Vide order dated 15.03.2023, respondents other than RoC were set as ex-parte.
6. Vide order dated 10.01.2024, it was recorded that the RoC has no objection as to the revival of the company.
7. Invoking the provision of Section 252 of the Companies Act, the Income Tax Dept. prayed for its restoration in order to carry out proceedings initiated against them. As per the averments, the Appellant was in possession of

information that there are many transactions by which income of the Respondent Company has escaped assessment for AY 2017-18 thereby rendering the Respondent Company liable for consequences under Income Tax Act, 1961. Hence, proceedings were initiated against the Respondent Company and notice dated 27.03.2021 u/s 148 of the I.T. Act was issued for A.Y. 2017-18.

8. The copy of Demand Notice dated 27.09.2022 for A.Y. 2017-18 reflecting the total outstanding demand of Rs. 25,85,168/- is placed on record. It is submitted that penalty proceedings under Section 271AAC(1), 272A(1)(d), 271A and 271F of the Income Tax Act, 1961 were initiated against the Respondent Company.
9. The grievance of the Income Tax Dept. is that the name of the Respondent Company had been struck off by the RoC seriously affecting the recovery of tax dues found on assessment proceedings. It is therefore necessary that in order to take steps for recovery of taxes and for any further consequential proceedings, that the Respondent Company's name be restored to the Register of Companies as if the name of the Company was never struck off. The restoration of the name of the Respondent Company to the Register of Companies would be just and equitable and in public interest.
10. Ld. Counsel for the Income Tax Submits that the aforesaid facts necessitate restoration of the name of the Respondent Company in the Register of Companies to proceed further in accordance with law. In view of the grounds raised by the Appellant, being an aggrieved person, the prayer can be entertained u/s252 of the Companies Act.
11. The provisions of Section 252(3) confer power upon this Tribunal to restore the name of the company to the Register of Companies maintained by the Registrar of Companies, if it is satisfied that the company was, at the time of its name being struck off, either carrying on business or was in operation or otherwise it is just that the name of the company be restored to the Register of Companies. Such power can be exercised before the expiry of twenty years of the publication of notice of striking off published under Section 248(5) of the Act.

Considering the facts and circumstances of the present case, we are of the considered view that it is “just and proper” to restore the name of the company to the Register of Companies as maintained by the RoC, so that Income Tax Department can recover tax dues.

12. The Appeal is, therefore, **allowed**. The RoC is therefore, directed to restore the name of the Respondent Company in their Register and also proceed to take such other and further penal action against the respondents in accordance with the statutory provisions.
13. We, however, make it clear that this Bench has only directed restoration of the name of the Respondent Company in the Register of Companies maintained by the RoC on the basis of averments made in the appeal and in no way endorse or have adjudicated about their entitlement to recover which shall be adjudicated by the department subject to the laws of limitation governing such recoveries. Compliance be made with the RoC within 30 days.

Sd/-
(DR. SANJEEV RANJAN)
MEMBER (T)

Sd/-
(MAHENDRA KHANDELWAL)
MEMBER (J)