

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH COURT-III
(SPECIAL BENCH)

COMPANY APPEAL NO. 226/252/ND/2020

An application under section 252 of the Companies Act, 2013.

IN THE MATTER OF

M/s. BTBS TRANSPORT & INFRASTRUCTURES PRIVATE LIMITED

Having Registered Office at:
160, Vigyan Vihar,
Delhi-110092

.... Appellant

VERSUS

1. THE REGISTRAR OF COMPANIES

NCT of Delhi and Haryana
IFCI Tower, 4th Floor, 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,
I.P. Estate, New Delhi-110001

...Respondent No.2

Order pronounced on: 10.05.2024

CORAM:

SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)
SHRI RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

APPEARANCES

For the Applicant: Mr. Kapil Sharma Adv.

ORDER

PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

1. The present Petition has been filed by the Director of the Appellant Company namely Mr. Amit Sahai under Section 252(3) of the Companies Act, 2013 for restoration of name of the struck off company in the register of companies, maintained in the office of the Registrar of Companies, NCT of Delhi and Haryana. It is stated that the company 'M/s. BTBS Transport & Infrastructures Private Limited was incorporated on 21.05.2008 and the name of the Company was struck off via notice no.- ROC-DEL/248(5)/STK-7/2879 on 30.06.2017 by the ROC.

2. It is contended that the reason given by RoC for striking the name of the company is that the Company has not been carrying on any business or operation for two years immediately preceding financial years and has not made any application within such period for obtaining the status of dormant company u/s 455 of Companies Act.

3. The Appellant Company's business is "To run and operate public transport vehicles in the National Capital Territory of Delhi and National Capital Region or elsewhere in India as Commercial carriers of passengers along with their baggage's, cargo carriers, courier carriers, mail carriers, forwarding, indenting, clearing, booking and travelling agents, as per NCT of Delhi Government guidelines from time to time". The Authorized Capital of the Company is Rs. 1,00,00,000/- (Rupees One Crore Only) divided into 10,00,000 (Ten Lakhs) equity shares of Rs. 10/- each. The Paid up Share Capital of the Company is Rs. 59,00,000/- (Rupees Fifty-Nine Lakhs Only) divided into 5,90,000 (Five Lakhs Ninety Thousand) shares of Rs. 10/- each.

4. The Applicant admits default for non-filing of the Financial Statements of the struck off company with the Respondent No. 1, Registrar of Companies, NCT of Delhi & Haryana.
5. It is submitted that the Appellant Company has advanced Rs. 15,50,000/- (Rupees Fifteen Lakhs) as showing under the head of Investment in the balance sheet for the Financial Year ended 31st March, 2018 for purchasing of land. Further, the company has Tangible assets of Rs. 35,00,000/- (Rupees Thirty-Five Lakhs Only). Tangible assets includes land.
6. It is submitted that the Directors of the Appellant Company had filed the Writ Petition under Article 226 of the Constitution of India before the Hon'ble Delhi High Court titled "AMIT SAHAI AND ANR. VERSUS UNION OF INDIA & ANR." Bearing no. W.P.(C) 2562/2019 for getting stay on the impugned list of disqualified directors issued by the Registrar of Companies, NCT of Delhi & Haryana so far as it includes the names of the directors of the Appellant Company. On 15th March, 2019 the Hon'ble Delhi High Court has given the stay on the impugned list to the extent it includes the names of the Directors of the Company.
7. The Appellant/Petitioner undertakes to comply with all the provisions of Companies Act, Income Tax Act and other applicable Acts. The Appellant Company is ready to comply with all the compliances of the Companies Act, 2013 and shall file pending Balance Sheets and Annual returns with the Registrar of Companies, NCT of Delhi & Haryana along with additional fees as applicable.
8. Notice was issued to the Registrar of Companies, NCT of New Delhi and Haryana. The Registrar of Companies has submitted a report. It was stated in the report that only after compliance with the requirements to be met under

Section 248 of the Companies Act, 2013, the Registrar of Companies has struck off the company's name from the register.

9. RoC has not objected to this application for restoration of the name of the company subject to statutory compliances being made.
10. The provisions of section 252 of the Companies Act, 2013, vests this Tribunal with the discretion that where the Company, whose name has been struck off, is able to demonstrate that it is just and equitable to do so it can restore the name of the Company, in the Register of the Registrar of Companies. The Appellant itself, who now seeks restoration of the name of the Company in the register maintained by Registrar of Companies and company not being a shell company then the company deserves to be restored.
11. According to Section 252 of the Companies Act of 2013, any member or creditor who feels aggrieved is also qualified to file "Appeal" against the Registrar of Companies' decision before the period of 20 years following the date the decision was published in the Official Gazette. We are of the considered view that appellant is the Company and in the light of the above findings, this company appeal is maintainable in the eyes of law.
12. On perusal of the application, we are satisfied that the name of the company should be restored to the register
13. Accordingly, the present petition is allowed on the following terms: -
 - a. The Registrar of Companies, NCT of Delhi and Haryana the respondent herein is directed to restore the original status of the petitioner company as if the name of the Company had not been struck off from the register of Companies with the resultant and consequential actions like changing status of petitioner company from 'struck off' to 'Active'.

- b.** The Petitioner Company is directed to file all pending statutory documents including Annual Accounts and Annual returns along with the prescribed fee and additional fee as decided by Registrar of Companies, NCT of Delhi and Haryana within 45 days from the date on which its name is restored on the register of companies maintained by the Registrar of Companies, NCT of Delhi and Haryana.
- c.** Accordingly, the appeal is allowed, subject to payment of costs of Rs. 50,000/- to the Registrar of Companies. The restoration of the Appellant 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 Appellant Company shall then stand restored- in the Register of the RoC, as if the name of the company had not been struck off.
- d.** The petitioner is directed to deliver a certified copy of this order with the Registrar of Companies, NCT of Delhi and Haryana within thirty days of the receipt of this order.
- e.** On such delivery and after due compliance with the above directions, the Registrar of Companies, NCT of Delhi and Haryana is directed to publish the order in the Official Gazette under his office name and seal.
- f.** This order is confined to the violations, which ultimately led to the impugned action of striking off the name of the Company, and it will not come in the way of the Registrar of Companies, NCT of Delhi and Haryana to take appropriate action(s) in accordance with law, for any other violations/offences, if any, committed by the petitioner company prior to or during the period the name of the Company remained struck off.

14. The Company Appeal No. 226/252/ND/2020 is **Allowed** and **disposed off** accordingly.
15. The Registry is directed to send e-mail copies of the order forthwith to all the parties inclusive of the Counsel.
16. Urgent certified copy of this order, if applied for be issued upon compliance with all requisite formalities.

Sd/-

**RAHUL BHATNAGAR
MEMBER (TECHNICAL)**

Sd/-

**BACHU VENKAT BALARAM DAS
MEMBER (JUDICIAL)**