

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH-V**  
**Appeal No. 125/252/ND/2022**

**IN THE MATTER OF:**

**INCOME TAX OFFICER, WARD 22(1), NEW DELHI**  
**C. R. BUILDING, I. P. ESTATE,**  
**NEW DELHI-110002**

**...APPELLANT**

**VERSUS**

**1. REGISTRAR OF COMPANIES, DELHI**

**4TH FLOOR, IFCI TOWER,**  
**61, NEHRU PLACE, NEW DELHI - 110019**

**...RESPONDENT NO. 1**

**2. M/s SAB FAB PRIVATE LIMITED.**

**AT:G-55, 2ND FLOOR ROYAL PALACE BUILDING,**  
**MAIN VIKAS MARG LAXMI NAGAR,**  
**DELHI-110092**

**...RESPONDENT NO. 2**

**3. ABHISHEK KUMAR**

**DIRECTOR**

**...RESPONDENT NO. 3**

**4. MOHD. AHSAN**

**DIRECTOR**

**...RESPONDENT NO. 4**

**Order Delivered on:07.02.2023**

**CORAM:**

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

**DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)**

**PRESENT:**

For the IT Dept : Mr. Puneet Rai, Mr. Nikhil Jain, Advs.

For the RoC : None Appeared

## **ORDER**

### **AS PER: SHRI P.S.N PRASAD, HON'BLE MEMBER (JUDICIAL)**

1. This appeal has been filed by Income Tax Authority ('appellant') invoking the provisions of Section 252(1) of the Companies Act, 2013 for restoration of the name of the Respondent No. 2 Company i.e., M/s Sab Fab Private Limited having CIN: U52100DL2014PTC265877 in the Register of Companies maintained by the RoC, Respondent No. 1.
  
2. As the respondents other than RoC have not responded to the notice, service was duly affected via speed post and publication in Financial Express Newspaper, English Edition and Jansatta, Hindi Edition newspapers dated 03.09.2022 on the Respondent No.2 Company and its Directors informing the date of hearing i.e. 12.09.2022 of the present Company Appeal. The proof of service via publication was filed vide Affidavit of Service and Publication dated 03.09.2022. After effective service through publication, other than the RoC (Respondent No.1), none appeared on behalf of the Respondent Nos. 2 to 4 in the present Company Appeal. Accordingly, Respondent No.2 to Respondent No.4 were set ex-parte vide this Tribunal's order dated 16.11.2022. Respondent No. 1, RoC has appeared on 04.07.2022, however have not filed its reply/ report in the present matter.
  
3. Vide Proceedings initiated by the Ministry of Corporate Affairs, through the office of the RoC, names of several companies were struck off for want of filing Statutory Returns. The name of the 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 dt. 08.08.2018.
  
4. Invoking the provision of Section 252(1) 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 of the appellant, an assessment order on 22.03.2022 under Section 147 read with Section 144 of the Income Tax Act, 1961 was issued against the Respondent No.2

Company which resulted in a demand of Rs.22,09,20,490/- pending against the Respondent No.2 Company. Further, it is submitted that the Appellant ha disused show cause notice under Section 274 read with Section 271AAC(1), Section 271F, Section 271A and Section 272A(1) against the Respondent No.2 Company on 22.03.2022. The copy of Assessment Order dated 22.03.2022 along with Demand Notice for A.Y. 2017-18 reflecting the total outstanding demand of Rs. 22,09,20,490/- is placed on record.

5. The grievance of the Income Tax Dept. is that the name of the Respondent No.2 Company had been struck off by the RoC had seriously affected the assessment proceedings against the Respondent No.2 Company. The provisions of the Companies Act, 2013 cannot be employed in a manner which creates immunity for the Assesse from discharging its tax liability. 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.
6. Ld. Counsel for the Income Tax Submits that the aforesaid facts necessitate restoration of the name of the Respondent No.2 Company in the Register of Companies is necessary 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/s 252 of the Companies Act.
7. At this juncture, it will be advantageous to examine the mandatory requirements of Section 252 (3) of the Companies Act, 2013 insofar as the grant of relief as prayed for by 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 workman 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.”

8. It is immediately discernible from the provisions contained in Section 252 (3) of the Companies Act, 2013 that if a company or any member or **creditor** feels aggrieved, they would also be competent to file an **‘Appeal’** against the order of the Registrar of Companies before the expiry of twenty years from the date of publication of order in the Official Gazette. Further, Section 252(3) of the Companies Act, 2013 envisages that at least **one of the three conditions** are required to be fulfilled before exercising of jurisdiction by this Tribunal to restore a company to the Register of Companies on the file of the Registrar of Companies: (i) That the company at the time of its name was struck off was carrying on business, or (ii) it was in operation or **(iii) it is otherwise just that the name of the company be restored on the register.**

9. Considering the facts and circumstances of the case before us and the averments as made by the appellant, this Tribunal is of the earnest view that fairness and justice go hand in hand and so this Tribunal must weigh the requirement of being just from the lens of fairness and justice based on the reasons put forth by the appellant in the instant appeal. It is to be borne in mind that the presence of the word **‘or otherwise’** signifies that even if the Company was not carrying on any business or was not in operation at

the time of striking off, it is still open to the Tribunal to order restoration if it appears to it to be 'otherwise' 'just'. Further, it is pertinent to mention that the term '**Creditor**' in **Section 252** of the Companies Act, 2013 ought to be construed widely so as to include a 'creditor' whose debt was contingent or prospective.

10. At this juncture, it is relevant to refer the **Hon'ble Delhi High Court's judgement in 'Sidhant Garg and Anr.' V. 'Registrar of Companies and Ors.' reported in (2012) 171 Comp.Cas. 326,** wherein the Hon'ble High Court held that, *"the word "just" would mean that it is fair and prudent from a commercial point of view to restore the Company and that the Court has to examine the concept of 'justness' not exclusively from the perspective of a creditor or a member or a debtor but from the perspective of the society as a whole."*
11. The Appeal is, therefore, **ALLOWED**. The RoC is therefore, directed to restore the name of the Respondent Company No.2 in their Register of Companies and also proceed to take such other and further penal action against the respondents in accordance with the statutory provisions.
12. We however make it clear that this Bench has only directed restoration of the name of the Respondent No.2 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. Charges involved in seeking restoration of the Respondent Company's name with the office of the RoC shall be borne by the Appellant. Compliance be made with the RoC within 30 days.

**Sd/-**  
**(DR. BINOD KUMAR SINHA)**  
**MEMBER (T)**

**Sd/-**  
**(SHRI P.S.N PRASAD)**  
**MEMBER (J)**