

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

COMPANY APPEAL NO. 154/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:

SANDEEP KUMAR

RAJA KHERI, TEH, DISTT. PANIPAT,
PANIPAT, HARYANA-132103

Shareholder/Director of

PMGSS INDIA PRIVATE LIMITED

Bearing PAN No. AALCP4904A

Having Registered Office at RZ-91A & 94 BLK A, FIRST FLOOR,
OM VIHAR, UTTAM NAGAR, DELHI, NEW DELHI 110059

.... Appellant

Versus

REGISTRAR OF COMPANIES

NCT of Delhi & Haryana,
Ministry of Corporate Affairs,
Government of India
4th Floor, IFCI Tower, Nehru Place,
New Delhi-110019

.... Respondent No. 1

INCOME TAX DEPARTMENT

JAWAHARLAL NEHRU MARG, BLOCK B,
PRESS ENCLAVE, SAVITRI NAGAR,
NEW DELHI, DELHI 110002

.... Respondent No. 2

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 : Mr. Parvindra Nautiyal, Adv.

For the Respondent :

For the RoC : Ms. Shankari Mishra, Adv.
For the IT Deptt. : Mr. Ruchir Bhatia, Sr. St. Counsel, Mr. Pratyaksh Gupta, Jr. St. Counsel with Mr. Ashish Kumar, Adv.

ORDER

PER: DR. SANJEEV RANJAN, MEMBER (TECHNICAL)

1. The present appeal has been filed by Appellant, Mr. Sandeep Kumar, stating to be a Shareholder/Director of the 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) vide Public Notice ROC-DELHI/248(1)/STK-5/2022/5739 dated 28.09.2022.

FACTS

2. That the Company was incorporated on 10.10.2020 as a private limited company and was registered with the Registrar of Companies, NCT of Delhi (RoC) vide Registration No. 371289 and the Certificate of Incorporation bearing CIN: U74999DL2020PTC371289 was issued to the Company.
3. The authorized share capital of the company is Rs. 15,00,000/- divided into 1,50,000 equity shares of Rs. 10/- and the issued, subscribed & paid-up capital of the company is Rs. 2,00,000/- divided into 20,000 number of equity shares of Rs. 10/-. The registered office of the company is situated at RZ-91A & 94 BLK A, First Floor, Om Vihar, Uttam Nagar, New Delhi, 110059. The application is well within the jurisdiction of this tribunal. The company is engaged in the business of providing security services.
4. The Company is continuously operative since its incorporation and also trying to maintain all the requisite documentation, as per the provisions of Companies Act, 2013.
5. That the Company has been unable to file its Annual Returns and Balance sheets on the MCA Portal due to lack of awareness of compliances requirements among directors and their unavailability due to Covid-19 pandemic. Further, the company has not made any application for obtaining status of Dormant Company under Section 455 of the Companies Act, 2013, during such period. Through, the

Appellant asserts that the company has been active since its incorporation, incurring genuine expenses on daily basis, and also endeavouring to maintain all the necessary documentation.

6. Owing to such failure, the RoC issued a notice ROC-DEL/248(1)/STK-5/2022/5739 dated 28.09.2022 in STK-5 to strike off the name of the Company. Further, the Form STK-7 was issued on 13.01.2023, whereby the name of the Company was struck off from the Register of Companies.
7. The present Appeal is preferred under Section 252(3) of the Companies Act, 2013 for the Restoration of name of the Company in the Register of Companies maintained by the Registrar of Companies, NCT of Delhi & Haryana.
8. The Appellant has filed consent affidavit of Mr. Ram Meher, other shareholder of the company, giving consent for revival of the company in compliance of order dated 04.07.2023 and the same is taken on record.
9. The Appellant has issued advance notice to the Registrar of Companies and Income Tax Department. Pursuant to that notice, Registrar of Companies, NCT of Delhi and Haryana (Respondent) had appeared and filed its reply dated 20.12.2023 and further submitted that they have no objection on revival subject to filing of all pending Annual Returns and Balance Sheets. Income Tax Department also appeared before this tribunal and submitted that they have no objection on restoration of the Company and the same is recorded vide order dated 18.10.2023.
10. The Appellant also asserted that the Balance sheets and Annual Returns were not filed due to lack of awareness and absence from the Company but the same will be filed pursuant to restoration of the Company.

CONTENTIONS OF RESPONDENT (RoC)

11. The Registrar of Companies (ROC) in its reply dated 20.12.2023 submits that the Appellant Company was incorporated on 10.10.2020 and there is no data or record which can be taken into consideration pertaining to the Annual Return and Balance Sheet filed by the Appellant Company to the office of RoC since incorporation.

12. 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.

ANALYSIS/CONCLUSION

13. Heard the Ld. Counsel for the Appellant as well as Ld. Counsel for RoC. Record has been thoroughly perused. We observe that the Appellant Company in order to sustain his case, has placed reliance on the following documents: -

- a) Copy of bank statement for the period 15.12.2021 to 18.01.2023.
- b) Copy of invoices.
- c) Affidavit cum No-objection Certificate of Mr. Ram Meher, Shareholder/Director of PMGSS India Private Limited.

14. On the perusal of the documents on record, it is observed that the Company was operative and carrying on its business operations in the previous financial years.

15. 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.”

16. 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.”

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

18. 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 Company's name i.e. M/s PMGSS INDIA PRIVATE 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. 154/252/ND/2023 stands allowed** with aforesaid terms.

Let the copy of the order be served to the parties.

File be consigned to records.

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

Sd/-
(MAHENDRA KHANDELWAL)
MEMBER (J)