

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-IV

COMPANY APPEAL NO. 163/ND/252/2023

In the matter of Section 252(1) & 252(3) of the Companies Act, 2013

IN THE MATTER OF:

**INCOME TAX OFFICER WARD 7(1),
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 DISTINCT SOFTWARES PVT LTD
301, 3RD FLOOR, GALI NO. 39,
DHAKA CHAMBERS, NAIWALA,
KAROL BAGH, DELHI**

...RESPONDENT NO. 2

**3. MR. VICKY
DIRECTOR
301, 3RD FLOOR, GALI NO. 39,
DHAKA CHAMBERS, NAIWALA,
KAROL BAGH, DELHI**

...RESPONDENT NO. 3

**4. MR. SUNNY
DIRECTOR
301, 3RD FLOOR, GALI NO. 39,
DHAKA CHAMBERS, NAIWALA,
KAROL BAGH, DELHI**

...RESPONDENT NO. 4

Order Delivered on: 09.02.2024

CORAM:

**SHRI MANNI SANKARIAH SHANMUGA SUNDARAM, HON'BLE
MEMBER (JUDICIAL)
DR. SANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)**

PRESENT:

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

ORDER

PER: MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (JUDICIAL)

1. This appeal has been filed by Income Tax Officer Ward 7(1) invoking the provisions of Section 252(1) read with Section 252(3) of the Companies Act, 2013 for restoration of the name of the Respondent No. 2 Company i.e., M/s Distinct Softwares Pvt. Ltd., having CIN: U72200DL2014PTC265806 in the Registrar of Companies maintained by the ROC, Respondent No. 1.
2. Notice was issued by this Tribunal to all the Respondents vide order dated 11.07.2023 read with order dated 05.12.2023. The service was duly effected via speed post and publication in “Financial Express” Newspaper, English Edition and “Jansatta”, Hindi Edition newspapers dated 20.12.2023 on the Respondent No. 2 Company and its Directors informing the date of hearing i.e., 23.01.2024. After effective service through publication, none appeared on behalf of 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 23.01.2024.
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, which had not filed any Return of Financial Statement, was duly struck

off from the Registrar of Companies vide STK-7 dated 08.08.2018 (Company's name appearing at Serial No. 5578).

4. Invoking the provision of Section 252(1) read with Section 252(3) of the Companies Act, the Income Tax Department prayed for its restoration in order to carry out proceedings initiated against Company. As per the averments, the appellant company had made certain transactions by which income of the Respondent No. 2 Company had escaped assessment for AY 2015-16 & 2016-17 thereby rendering the Respondent No. 2 Company liable for consequences under the Income Tax Act, 1961. Further, the Appellant submitted that the proceedings were initiated against the Respondent No. 2 Company and orders was passed under Section 147 read with Section 144 and Section 144B of the Income Tax Act, 1961 on 22.05.2023 and notices under Section 156 of the Income Tax Act, 1961 for Assessment Year 2015-16 & 2016-17 on 22.05.2023.
5. It is submitted that a demand of Rs. 53,45,920/- in A.Y. 2015-16 & Rs. 16,00,630/- in A.Y. 2016-17 pending against the Respondent No. 2 Company. The copy of Assessment Order dated 22.05.2023 along with Demand Notice dated 22.05.2023 for A.Y. 2015-16 & 2016-17 reflecting outstanding demand of Rs. 53,45,920/- & Rs. 16,00,630/- is placed on record.
6. The grievance of the Income Tax Department is that the name of the Respondent No. 2 Company had been struck off by the RoC seriously affecting the assessment and recovery proceedings. The provisions of the Companies Act, 2013 cannot be employed in a manner which

creates immunity for the Assessee 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.

7. 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/s 252 of the Companies Act.

8. 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.”

9. 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 **‘Application’** 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 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.**
10. 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. The appellant herein being a statutory authority having an outstanding tax demand would certainly fall within the scope of the term ‘creditors’ as envisaged by the statute. In **Commissioner of Income Tax, Jaipur V. Gopal Shri Scrips, Civil Appeal 2922 of 2019**, Hon’ble Supreme Court held that the appeal of the Revenue cannot fail on the ground that the company was already struck off under section 560 of the erstwhile Companies Act, 1956. Para 11 to 16 of the Judgment is extracted hereunder: -

“11. “In other words, the High Court was of the view that since the respondent-company stands dissolved as a result of the order passed by the Registrar of Companies under Section 560(5) of the Companies Act. The appeal filed against such Company which stands dissolved does not survive for its consideration on merits.

12. In our view, the High Court was wrong in dismissing the appeal as having rendered infructuous.

13. The High Court failed to notice Section 506(5) proviso (a) of the Companies Act and further failed to notice Chapter XV of the Income Tax Act which deals with "liability in special cases" and its clause (L) which deals with "discontinuance of business or dissolution".

14. The aforementioned two provisions, namely, one under the Companies Act and the other under the Income Tax Act specifically deal with the cases of the Companies, whose name has been struck off under Section 506 (5) of the Companies Act.

15. *These provisions provide as to how and in what manner the liability against such Company arising under the Companies Act and under the Income Tax Act is required to be dealt with.*

16. *Since the High Court did not decide the appeal keeping in view the aforementioned two relevant provisions, the impugned order is not legally sustainable and has to be set aside.”*

11. 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.”
12. In the facts and circumstances of the instant case, it is our considered view that it would be just and in public interest to restore the name of the Respondent No. 2 Company to the Register of Companies maintained by the ROC, so that the Appellant Statutory Authority is able to collect/recover the tax demand outstanding as well as to proceed with the penalty proceedings initiated against the company. Otherwise, unscrupulous Promoters/Directors of Companies may just get the name of their Company struck off by not submitting Annual Returns and Financial Statements with the ROC for more than 2 years to escape liability under the tax laws.

13. 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.
14. 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 Appellant's entitlement to recover the outstanding tax demand 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. SANJEEV RANJAN
MEMBER (TECHNICAL)**

Sd/-

**MANNI SANKARIAH SHANMUGA SUNDARAM
MEMBER (JUDICIAL)**