

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

COMPANY APPEAL NO. 227/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:

SADGURU FINMAN PRIVATE LIMITED

Registered Office at: 13/34,
W.E.A Karol Bagh,
New Delhi-110005

.... Appellant

Versus

REGISTRAR OF COMPANIES

4th Floor, IFCI Tower,
Nehru Place,
New Delhi- 110019

.... Respondent No.1

MAXWELL SECURITIES PRIVATE LIMITED

Kartik Business Center 203, Dhaka Chambers,
Karol Bagh, New Delhi 110005

.... Respondent No. 2

MR. ANIL GOYAL

319, Ward No 3, Kath Mandi Gohana
Sonipat, Haryana- 131301

.... Respondent No. 3

MS. RITU SAXENA

13/34 WEA, IV Floor,
Main Arya Samaj Road, Karol Bagh
New Delhi- 110005

.... Respondent No. 4

Order Delivered on: 07.06.2024

CORAM:

SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)
DR. SANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant : Adv. Yogesh Jagia, Adv. Harshit Ratra, Adv. Manoj
Kumar Garg
For the Respondent : Adv. Kundan Roy for R-2, R-3 & R-4
For the RoC : Adv. Shankari Mishra, Adv. Jyoti Khurana

ORDER

PER: DR. SANJEEV RANJAN, MEMBER (TECHNICAL)

1. The present appeal has been filed by Appellant Company under Section 252(3) of the Companies Act, 2013 for restoration of name of Maxwell Securities Private Limited (Respondent No. 2), which was struck off by the Registrar of Companies, NCT of Delhi and Haryana (Respondent) vide Public Notice ROC-DELHI/248(2)/STK-7/10148 dated 30.06.2020.
2. Brief facts of the case, as mentioned in the instant company appeal, which are relevant to the issue in question, are as follows: -
 - a) The subject Company was incorporated on 28.12.1994 as a private limited company having CIN: U74899DL1994PTC063842 and has its registered office at Kartik Business Center 203, Dhaka Chambers, Karol Bagh, New Delhi 110005. In the instant case, the Appellant is the creditor of the Respondent No. 2 Company and is aggrieved for having huge investments in the Respondent No. 2 Company which the Company is unable to return to the Appellant.
 - b) Respondent No. 2 was indulged in carrying on the business as a Stock Broker including dealing in shares and other securities. The Appellant purchased 15,000 equity shares of State Bank of India for a sum of Rs. 39,39,000/- (Rupees Thirty-Nine Lakhs Thirty-Nine Thousand) through Respondent No. 2 on 1 April 1997 and paid the amount.
 - c) The Appellant sent the shares to MCS Limited, the erstwhile Registrar and Transfer Agent of State Bank of India for transfer of the aforesaid 15,000 shares in its name but the application for transfer was stopped/ rejected on the ground that NSE has claimed these shares and the matter was sub-judice before the Hon'ble Delhi High Court. Thereby, the appellant became creditor of Respondent No. 2, for an amount equivalent to the value of 15,000 Shares of

SBI along with Corporate benefits thereon (present value whereof is more than Rs. 3 Crores).

- d) The Appellant also filed its claim on the ownership of disputed shares to the extent of 15,000 Equity shares of SBI (which it had bought and fully paid to Respondent No. 2), the case remained undecided for almost 25 years until 2022. Finally, an out of Court Settlement was reached between Respondent No. 2 and NSE through the intervention of the Hon'ble Delhi High Court Mediation and Conciliation Centre on August 3, 2022, and it was agreed that Respondent No. 2 will pay to NSE, and NSE will not claim ownership on the disputed shares.
 - e) Pursuant to the Settlement Agreement as aforesaid, the disputed shares will be transferred to Respondent No 2 and it can transfer the shares to respective buyers/ creditors/ lenders (including the appellant). Thereafter, the Respondent No. 1 struck off the name of Respondent No. 2 company from register of companies under Section 248 (5) of the Companies Act, 2013 making it impossible for the Company to act in terms of above. Hence, the present appeal is filed by the Appellant.
3. This Tribunal vide order dated 11.10.2023 directed to appellant to issue notice to the Respondent and Income Tax Department. Pursuant to notice, Registrar of Companies, NCT of Delhi and Haryana (Respondent) had appeared and filed its reply dated 14.12.2023 to the instant appeal.
 4. The Registrar of Companies (ROC) in its reply dated 14.12.2023 submits that company was incorporated on 28.12.1994 and the Subject Company had itself filed an application for voluntary striking off of the company and since there was no objection, the Company was struck off by the ROC. Further, Registrar of Companies (ROC) submits that the action of striking off of the present company was legal and justified, as the company voluntarily submitted application for removing its name from register of companies.
 5. However, the Ld. Counsel on behalf of RoC appeared before this Tribunal and submitted that subject to filing of necessary returns and documents, they have no objection if, the company is revived, as recorded in order dated 20.03.2024. Further, Respondent No. 3 and Respondent No. 4 have filed their affidavit dated 19.02.2024, thereby stating that they have no objection is the instant appeal filed by the Appellant is allowed and Respondent No. 2 company is restored.

6. The instant Appellant had received the report of the Income Tax Department and has placed on record the same vide dated 16.01.2024 which stated that they have no objection to the present appeal for restoration of company, subject to deposit of the demands (if any) outstanding against the Applicants.
7. 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 Settlement Report and the settlement agreement filed with the Hon'ble Delhi High Court Mediation and Conciliation Centre.
 - b) Affidavit by Respondent No. 3 and Respondent No. 4
8. 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.”*
9. As per the Settlement Report signed by the Ld. Mediator and parties to the dispute, all the dispute in terms of MOU dated 03.08.2022 have been settled. Also, as per Settlement Agreement, the party have agreed to pay the amount.

10. Since, the petitioner company is entitled for its shares, therefore the Subject Company is entitled to be restored. Hence, upon considering the facts and circumstances of this present petition, it would be “just and proper” to order restoration of the name of the Company in the Register of Companies maintained by the ROC.
11. 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 Appellant Company’s name i.e. Maxwell Securities 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. 227/252/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)