

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

COMPANY APPEAL NO. 479/252/ND/2020

In the matter of
An Appeal under Section 252(3) of the Companies Act, 2013.

And

In the matter of
Midwest Biofuel India Pvt. Ltd.
Having its registered office at:
G-302, 2nd Floor, Habitat Co-operative GHS,
Vasundhra Enclave, New Delhi-110096

Mr. Parvez Rasheed

R/o 151/Bm. D.D Nagar, Sector B,
Gwalior-475110, Madhya Pradesh

...Applicant No.1

Mr. Yashwant Singh Tomar

R/o Shanti Bhawan Laxmanpuri Landour, Cantt, Mussorie
Dehradun-248179, Uttarakhand

...Applicant No.2

Versus

The Registrar of Companies,

NCT of Delhi and Haryana
IFCI Tower, 4th Floor, 61, Nehru Place,
New Delhi-110019

...Respondent.1

Income Tax Department

Range Code 217, A.O.2, Ward 17(2),
C.R. Building, Delhi

...Respondent.2

Order pronounced on 16.03.2023

Coram:

Sh. Bachu Venkat Balaram Das : Member (Judicial)
Sh. Atul Chaturvedi : Member (Technical)

PRESENT:

For the Applicant: Mr. Sameer Srivastava, Mr. Vinay Kumar,
Advocates.

For the RoC : Asst ROC on behalf of ROC Delhi

ORDER

Per: Shri Atul Chaturvedi , Member (T)

1. The present Appeal has been filed by Appellant Company 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 'Midwest Biofuel India Pvt.Ltd' was incorporated on 20.09.2006 and the name of the Company was struck off on 08.08.2018 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 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. Further it is contended by the petitioner that the Company was carrying on the business and in order to substantiate the same, the appellant has annexed the certified copies of the Bank statements for the FY 2015-2019, which shows the fixed assets amounting to Rs. 2,70,29,086/-in the name of the Appellant Company. Upon the said contentions, the Ld. Counsel for the Petitioner prayed for the passing of an order

for restoration of the name of the appellant company. Ld. Counsel further stated that the company is not a shell company nor any illegal transaction has taken place in the company.

- 3.** 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.
- 4.** RoC has not objected to this application for restoration of the name of the company.
- 5.** The Income Tax Department has not filed its reply therefore; it is deemed that they have no objection to this application for restoration of the name of the company. However, the Appellant company has filed affidavit cum undertaking dated 21.02.2023 stating that Appellant will pay statutory dues if any pending the Income tax authority as per the provisions of Income Tax Act.
- 6.** On perusal of the application, we are satisfied that the name of the company should be restored to the register of companies.
- 7.** Thus, taking into consideration the provisions of section 252 of the Companies Act, 2013, which vests this Tribunal with a discretion where the Company, whose name has been struck off, and if such Company is able to demonstrate that it is just and equitable to do so, can restore the name of the Company, in the Register and in the interest of all stakeholders, including the Appellant itself.
- 8.** 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.** The restoration of the Company's name is also subject to the payment of the cost of ₹25,000/- (Rupees twenty five thousand only) through online payment in www.mca.gov.in under miscellaneous fee by mentioning particulars as "Payment of cost for restoration of the company pursuant to orders of NCLT in C. Appeal No. 135/252/ND/2020."
- 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.

9. The C. Appeal No. 479/252/ND/2020 is disposed of accordingly.
10. The Registry is directed to send e-mail copies of the order forthwith to all the parties inclusive of the Counsel.
11. Urgent certified copy of this order, if applied for be issued upon compliance with all requisite formalities.

SD/-

**Atul Chaturvedi
Member (Technical)**

SD/-

**Bachu Venkat Balaram Das
Member(Judicial)**