

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

COMPANY APPEAL NO. 243/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:

SHREE PROBUILD PRIVATE LIMITED

Registered Office at: 21,
Aamarpali Apartments, 56 I.P.
Extension Patparganj, Delhi- 110092, India

.... Appellant

Versus

1. REGISTRAR OF COMPANIES

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

**2. UNION OF INDIA, MINISTRY OF FINANCE,
DEPARTMENT OF REVENUE**

Through Department of Income Tax,
C/o Principal Chief Commissioner of Income Tax
C. R. Building, I.P. Estate, New Delhi

.... Respondent

Order Delivered on: 19.04.2024

CORAM:

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

PRESENT:

For the Applicant : Mr. S.S. Bhati, Mr. Anurag Paliwal, Mr. Rohit Sharma,
Adv.

For the Respondent:

For the ROC : Ms. Jyoti Khurana, Mr. Aakash Sharma, Adv.

For the IT Dept : Sr. Standing Counsel Mr. Sunil Agarwal, Jr. Standing
Counsel Mr. Shivansh B Pandya, Mr. Utkarsh Tiwari,
Adv.

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 the company, which was struck off by the Registrar of Companies, NCT of Delhi and Haryana (Respondent) vide Public Notice ROC-DEL/248(1)/STK-5/2022/535 dated 31.01.2022.
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) That the Appellant Company was incorporated on 27.05.2011 as a private limited company and was registered with the Registrar of Companies, NCT of Delhi (RoC) vide the Certificate of Incorporation bearing CIN: U70200DL2011PTC219981, having its registered office at 21, Aamarpali Apartments, 56 I. P. Extension Patparganj, Delhi- 110092, India.
 - b) That Ms. Madhavi Parikh, Director of the Applicant Company, checked the Company Master Data of the Applicant Company available on the web portal of the Ministry of Corporate Affairs on 10.06.2023 and got to know that the name of the Applicant Company has been struck off from the Register of Companies by the Registrar of Companies, NCT of Delhi and Haryana pursuant to Section 248(1) of the Companies Act, 2013.
 - c) That Applicant Company had received a notice in STK-1 vide no. ROC/DELHI/248(1)/5629965021 from the Registrar of Companies, NCT of Delhi and Haryana on 19.11.2022 in which the Registrar of Companies had given 30 days' time to the Applicant Company to respond by way its reply to that notice. The Applicant Company and its Directors were not able to send the representation in response to the aforesaid Notice No. ROC/DELHI/248(1)/5629965021 dated 19.11.2021 within 30 days but the Applicant Company had submitted their representation to that Notice with the Registrar of Companies, NCT of Delhi and Haryana on 07.03.2022.
 - d) The Applicant Company is aggrieved by having its name struck off from the Register of Companies since the Applicant Company was, at the time of its name being struck off, carrying on business and it is just that the Tribunal may

Order that the name of the Applicant Company 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. The facts would prove beyond doubt that the Applicant Company was carrying on business at the time of its name being struck off from the Register of Companies.

- e) That the Applicant Company is a law-abiding Company and holding its Annual General Meeting every year within the time prescribed under the Companies Act, 2013 and approved and adopted the audited financial statements in the Annual General Meetings along with Auditor's and Director's report for the relevant financial years but could not file its Form AOC-4 and Form MGT-7 with respect to the Financials and the Annual Returns since March 31, 2019. Copy of the documents with respect to the Annual General Meeting for the ended March 31, 2022, March 31, 2021 and March 31, 2020 of the Applicant Company is placed on record as Annexure-11.
 - f) That all stakeholders of the Applicant Company including shareholders, creditors, bank etc. would be adversely affected, if the Tribunal does not order that the name of the Applicant Company be restored to the register of companies.
 - g) That the present Appeal is for Restoration of the name of the Company in the Register of Companies maintained by the Registrar of Companies, NCT of Delhi & Haryana.
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 12.12.2023, to the instant appeal.
4. The Registrar of Companies (ROC) in its reply dated 24.08.2023 submits that the appellant company was incorporated on 27.05.2011 and the last Annual Return and Balance Sheet submitted by the company, before it was considered to be struck off, pertain to the financial year that ended on 31.03.2018. Moreover, no subsequent documents had been filed by the Appellant Company to obtain the status of the Dormant Company under Section 455 of the Companies Act, 2013.

5. 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. Further, Ld. Counsel of RoC had appeared before this Tribunal and submitted that subject to filing of the necessary returns etc, they have no objection if the company is revived as recorded in order dated 03.04.2024 read with order dated 09.04.2024.
6. The Income Tax Department appeared before this Tribunal and submitted that they have no objection if the Applicant Company is revived, as recorded in order dated 14.02.2024.
7. Further, it was observed by this Tribunal that only one shareholder/director has filed their affidavit in support of the appeal, and the Counsel for the Appellant undertook to file a consent affidavit from remaining shareholder/director. Therefore, in compliance of the order dated 22.09.2023, consent affidavit dated 03.10.2023 from remaining shareholders and directors have been placed on record.
8. 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 the documents with respect to the Annual General Meeting and the audited financials for the ended March 31, 2022, March 31, 2021 and March 31, 2020 of the Applicant Company.
 - b) Copy of the acknowledgement for filing of Form AOC-4 and Form MGT-7 and other Forms filed with the Registrar of Companies, NCT of Delhi and Haryana
 - c) Copy of bank statement of the Applicant Company
9. On the perusal of the documents on record, it is observed that the Company was operative and carrying on its business operations effectively in the previous financial years and hence, could not be said to be a dormant company under Section 455 of the Companies Act, 2013.
10. 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.”*

11. 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.”

12. 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.

13. 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. Shree Probuild 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, on account of striking of the Company's name by the RoC, 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. 243/252/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)