

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI, BENCH - VI**  
**APPEAL NO. 239/252/ND/2023**

**IN THE MATTER OF:**

**M/s SHWEZY TIMES PRIVATE LIMITED**  
**REGISTERED OFFICE AT:**  
**4594-A/2, Street No.9, Daryaganj, New Delhi**  
**[CIN: U51394DL1998PTC093096]**

**AND IN THE MATTER OF :**

1. **Ms. BHABHUTI SINGH AWANA**  
**R/o : House No. 1, Jhundpura, Sector-11,Noida, Uttar Pradesh – 201301**

**... APPELLANT**

**Versus**

2. **REGISTRAR OF COMPANIES,**  
**NCT OF DELHI & HARYANA,**  
**4<sup>TH</sup> FLOOR, IFCI TOWER,**  
**61, NEHRU PLACE,**  
**NEW DELHI- 110019**

**... RESPONDENT NO.1**

3. **INCOME TAX DEPARTMENT**  
**DCIT (Delhi High Court Cell)**  
**Lawyer's Chamber, Block No 1**  
**Room No 428 & 429**  
**Delhi High Court, New Delhi**

**... RESPONDENT NO. 2**

**CORAM:**

**SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)**  
**SHRI RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)**

**APPEARANCES**

**For the Appellant: Adv. Manisha Chaudhary and Adv. Shravan Chandrashekhar**  
**For the RoC: Ms. Jyoti Khurana, Advocate**  
**For the Income Tax Department: Adv. Puneet Rai, Senior Standing Counsel**  
**With Adv. Nikhil Jain**

**ORDER**

**PER: MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)**

**ORDER DELIVERED ON: 22.04.2024**

1. This is an appeal filed under section 252(3) of the Companies Act read with Rule 87A of the National Company Law Tribunal (Amendment) Rules, 2017 by the Appellant Company namely **M/s MORE ESTATES PRIVATE LIMITED [CIN: U92490DL2019PTC355582]** in relation to an order of striking off the name of the respondent company passed by the Respondent RoC with effect from 20.01.2023 under the provisions of Section 248(1)(c) of the Companies Act, 2013 read with Rule 9 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016.
2. In compliance of directions issued by this Tribunal vide order dated 20.09.2023, the appellant [33% shareholder] has filed consent affidavit from the remaining shareholders giving consent to revival of the company. They are as follows: -
  - (i) Rishabh s/o Sunil Lohia, r/o GA-17, Bandh Road, Phase-6, Ghora Mohalla, Aya Nagar, South Delhi – 110047 who averred that he had purchased 33% shares (3,300 shares) of Shwezy Times Private Limited from Mr. Dalbeer Singh on 09/09/2015 and accordingly claims to be competent to swear and file the aforesaid affidavit.
  - (ii) Ashok Kumar s/o Om Prakash, r/o J-203, Green Valley Apartments, Sector 22, Dwarka, Delhi – 110075. [34% Shareholder]
3. Notice was issued to Income Tax Department and RoC vide order dated 26.09.2023 for filing their appearance as well as reply.
4. On 08.02.2024, Ld. Counsel for RoC appeared before this Tribunal and stated that they have received satisfactory response from appellants to the observations that had been earlier raised by the RoC. Ld. Counsel for RoC

further stated that they have no objection to the restoration of the name of the company subject to filing of necessary compliances.

5. On 18.04.2024, Ld. Counsel for the Income Tax Department appeared before this Tribunal and stated that they have no objection if the company's name is restored.

6. **The appellant has made the following submissions in their appeal: -**

- a. Learned counsel for the Appellant represents that the Appellant Company was incorporated under the provisions of Companies Act, 1956 on 02.04.1998 and has its registered office at: 4594-A/2, Street No.9, Daryaganj, New Delhi which falls within the jurisdiction of this Tribunal (New Delhi Bench) and also RoC, NCT of Delhi & Haryana.
- b. The Authorized Capital of the Company is Rs. 1,00,000/-. The Paid-up Capital of the company was Rs. 1,00,000/- as per Master Data of the company.
- c. Appellant submits that the company was incorporated on 02.04.1998 and at the time of its incorporation, Mr. Neeraj Verma and Ms. Kamla Devi Verma were the directors of the company. Further, Mr. Ashok Kumar in 2003 ; Mr. Dalbir Singh in 2015 and Bhabhuti Singh Awana in 2016 became the directors of the company.
- d. That the company acquired a property (E-5, Sector-8, Noida) through an auction on 23/01/ 2003 which subsequently became the subject matter of legal dispute before Hon'ble Debt Recovery Tribunal (DRT). The Ld. Recovery Officer of DRT deemed the auction legal and valid and confirmed the auction sale of the said property in favour of the company by dismissing the objections filed by the borrower. Subsequently, appeals were made by the borrower

against the auction were made in DRT and Hon'ble Debt Recovery Appellate Tribunal (DRAT), all of which upheld the legality of the auction and sale.

- e. However, a writ petition [WP(C) No. 7862/2015] has been filed by the borrower before the Hon'ble Delhi High Court which seeks to set aside the order passed by Hon'ble DRAT. The Hon'ble Delhi High Court vide its order dated 17.02.2016 had granted a stay on the final order dated 03.03.2015 passed by Hon'ble DRAT and the company was refrained from selling, mortgaging, registering or transferring the said property. The writ petition remains sub-judice before Hon'ble Delhi High Court and meanwhile the status quo order continues to be in operation.
- f. It is submitted that due to the operation of aforesaid order passed by the Hon'ble Delhi High Court, the directors were under the impression that the status quo prohibited them from filing of compliance documents pertaining to the company. It is contended that the directors have always acted in the best interests of the company which is evident from the fact that they got the company converted from "dormant" to "active status" in 2015 coupled with the fact that they have been pursuing the property litigation rigorously for over 2 decades.
- g. It is pleaded that due to lack of professional guidance and support, the directors were unaware of obligations to be undertaken by the company and hence failed to meet requisite statutory compliances.

- h. It is further averred that the directors came to know regarding the strike-off in regard to the company during the course of proceedings before the Hon'ble Delhi High Court when the opposite party presented the master data of the company at the stage of final arguments. Ld. Counsel for appellant emphasized that the company was removed from the register of companies maintained with the RoC without giving any notification or hearing opportunity to the directors concerned who had no prior information.
- i. It is contended that the property in question on which a stay order was granted by the Hon'ble Delhi High Court constitutes the main asset of the company which has significant potential for establishment of manufacturing activities and retail outlets. It is further contended that regardless of the outcome of the pending writ before the Hon'ble Delhi High Court, the company needs to have an active status for any orders to be executable against it.
- j. The appellant in rejoinder dated 23.11.2023 as response to the reply of the RoC dated 11.10.2023 has stated that previously till 2015, the company has diligently submitted all the balance sheets and annual reports without any default whatsoever. Regarding the no-profit situation, it is averred that since the main asset of the company is under stay order passed by Hon'ble Delhi High Court, the company has been unable to execute transactions as per its planned business model.
- k. It is prayed that the present appeal is bonafide and irreparable hardship would be caused to the appellant, company shareholders, creditors and stakeholders in case the present appeal gets dismissed.

7. **The respondent RoC have made the following submissions in their reply: -**

- a. That the company was incorporated on 02.04.1998 and the last annual return and Balance Sheet which had been submitted by the company with the office of the RoC, before it was considered to be struck-off, pertained to the Financial Year ending on 31.03.2015. The Respondent RoC further contended that neither any subsequent documents were filed by the appellant company with the Respondent RoC to obtain the status of a “Dormant Company” u/s 455 of The Companies Act, 2013.
- b. That as per Memorandum of Association of the struck off company, the main objects of the company are as follows: -

*“To act as importers, exporters, indentures, traders, dealers, agents, manufacturers of all kinds of wall clocks, watches and other time displaying devices etc. ”*

- c. That as per records available on MCA 21 Portal, the last directors of the company were as follows :-

- (i) Dalbir Singh, R/o E59, Yadav Nagar, Samaypur Village, Delhi - 110042
- (ii) Ashok Kumar, R/o J-203, Green Valley Apartments, Sector 22, Dwarka, Delhi – 110075.
- (iii) Bhabhuti Singh Awana, R/o House No. 1, Village Jhundpura, Noida, Uttar Pradesh-201301.

- d. The RoC issued notice in the form of STK-1 on 18.06.2018 u/s 248(1) of the Companies Act, 2013 intimating the company (Shwezy Times Private Limited)

and its directors (Ashok Kumar and Dalbir Singh) regarding the aforesaid defaults in filing annual returns and audited balance sheets. Although the petitioner herein namely Bhabhuti Singh Awana claims that he was not served with the copy of STK-1 as he was the director however the respondent RoC has rebutted this contention mentioning that as per the records available on MCA 21 Portal, the petitioner was appointed as Additional Director on 15.01.16 and there was no information as to whether he was appointed as director in the ensuing AGM which was ought to be held on 30.09.2016, therefore this ground of appeal must not be taken into consideration.

- e. Thereafter, the public notice in form STK-5 was issued for 31,200 companies which included the name of M/s SHWEZY TIMES PRIVATE LIMITED and was published on website of MCA on 18.07.2018.
- f. Thereafter, the name of the company was struck off as per Section 248(1)(c) of the Companies Act, 2013 read with Rule 9 of the Companies (Removal of names from the Register of Companies) Rules, 2016 vide notice in the form of STK-7 dated 08.08.2018 published in the official gazette.
- g. Hence the RoC contended that it had reasonable cause to believe that the company was not in operation at the time of strike off and was not carrying on any business for a period of two immediately preceding financial years (as indicated by non-filing of the financial statements of the company for 2 or more years).

h. The respondent RoC pleads that the action of striking off the present company from the register of companies maintained by RoC was therefore legal and justified owing to above circumstances and was taken in good faith by the RoC.

i. The RoC has made following observations on the basis of information provided by the appellant: -

S.NO	PARTICULARS	REMARKS
1.	REVENUE FROM OPERATIONS	As per Profit & Loss Account attached. F.Y. 2014-15 : NIL
2.	AUDITED FINANCIAL STATEMENTS	SUBMITTED WITH THE PETITION F.Y. 2014-15
3.	BANK STATEMENT	NOT SUBMITTED WITH THE PETITION
4.	INCOME TAX RETURN	NOT SUBMITTED WITH THE PETITION

### **ANALYSIS AND FINDINGS**

8. We have considered the plea of the Appellant and the representations of RoC. It is evident from the plea of the Appellant that it admits the default. However, the Appellant is seeking restoration of its name in the register as maintained by RoC relying on the ground that due to lack of professional support, the directors of the company were unable to do statutory filings as prescribed by law, however now seeks an opportunity to rectify them and undertakes to be diligent and abide with all statutory compliances duly in future exercising abundant caution without fail.



9. Nevertheless, Appellant is now willing to rectify the omission instantly with abundant precaution as to all statutory compliances in the future. Having considered submissions of all the parties and considering the appreciation of documents placed on records to substantiate their respective claims, we are of the view that it is **just and equitable** that the name of the Company should be restored on the register of companies as maintained by the Respondent RoC.

10. In Purushottamdas and another (Bulakidas Mohta Company Private Limited V. Registrar of Companies, Maharashtra & Others.), The Hon'ble Bombay High Court observed as follows: -

*20. "The objects of Section 560(6) of the Companies Act, is to give a chance to the company, its members and creditors to revive the company which has been struck off by the Registrar of Companies, within a period of 20 years, and to give them an opportunity of carrying on the business only after the company judge is satisfied that such restoration is necessary in the interests of justice".*

11. In M.A. Rahim & another V. Sayri Bai, the Division Bench of Hon'ble Madras High court, reported in MANU/TN/0218/1973, has held that the word just' connotes reasonableness and something confirming to 'Rectitude' and 'Justice ', something Equitable and Fair.

12. Accordingly, **the appeal is allowed**, subject to payment of costs of Rs. 50,000/- to be borne by the appellants payable to the Registrar of Companies. The restoration of the Appellant Company's name in the Register will be subject to their filing all outstanding documents for the defaulting years as required by law and completion of all formalities, including payment of any late fee or other charges which are leviable by the

Respondent RoC for the late filing of statutory returns. The name of the Appellant Company shall then stand restored in the Register of the RoC, as if the name of the company had not been struck off.

13. The direction for freezing the bank account(s) of the Appellant Company, if on this ground, shall consequently be also set aside immediately to enable the company to carry out its business operation. Compliance of this order for restoration shall be made by the Respondent with all its consequential effects within one week of compliance by the Appellant.

14. The appeal is **allowed** and disposed of accordingly. Let the copy of the order be served to the parties.

-SD/-  
**(RAHUL BHATNAGAR)**  
**MEMBER (TECHNICAL)**

-SD/-  
**(MAHENDRA KHANDELWAL)**  
**MEMBER (JUDICIAL)**