

**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ**

CP No.38/ALD/2023

IN THE MATTER OF:

An application/ petition under Section 252 (3) treated appeal u/s 252(1) of the Companies Act, 2013 read with Companies Rules, 2016.

IN THE MATTER OF:

M/s. NIPRO INFOTECH PRIVATE LIMITED

141 Akbarpur Tentigoan, Mathura, UP- 281205

.....Appellant No.1

MR. MAHESH KUMAR SINGH, SHAREHOLDER/DIRECTOR

141 Akbarpur Tentigoan, Mathura, UP- 281205

.....Appellant No.2

..... Applicants

Versus

REGISTRAR OF COMPANIES,

KANPUR, UTTAR PRADESH

Having office at Westcott Building,

The Mall, Kanpur, UP-208001, India

.....Respondent

ORDER PRONOUNCED ON: 8th MAY, 2024

CORAM:

Shri Praveen Gupta

: Hon'ble Member (Judicial)

Shri Ashish Verma

: Hon'ble Member (Technical)

Appearances:

Sh. Anurup Dutta with : For the Petitioner
Sh. Anang Kr. Shandilya, Adv.
Sh. Pradeep Singh Sisodia, CGSC : For the RoC
Sh. Gaurav Mahajan, Sr. SC : For the I.T. Deptt

ORDER

1. This petition/application has been filed on 10.04.2023 U/s 252(3) of the Companies Act, 2013 (hereinafter referred as the Act) by M/s Nipro Infotech Private Limited (hereinafter referred as the Appellant Company) through its Director and Shareholder Mr. Mahesh Kumar Singh (hereinafter collectively referred as the Appellants) against the order of Registrar of Companies, Uttar Pradesh, Kanpur (hereinafter referred as the Respondent/ROC) passed, vide order dated 06.12.2022 in STK-7 striking off the Appellant Company from the Register of Companies from the date of publication of the said order and the said company is also dissolved due to not filing of Form INC 20A providing information about subscription of share capital and seeking commencement of business certificate and then making a prayer for restoring

the name of the company in the Register of Companies. Later, a supplementary affidavit was filed on 08.02.2024 to treat the present petition/application u/s 252(3) as an appeal filed u/s 252(1) and the same has been taken on record vide order dated 06.02.2024 of this Tribunal.

2. As averred in the appeal documents that the Appellant Company was incorporated on 31.03.2021 within the jurisdiction of Registrar of Companies (Uttar Pradesh) Kanpur, having CIN No. U72900UP2021PTC144516 and the registered office at 141 Akbarpur Tentigoan, Mathura, UP-281205 with authorized share capital of Rs.1 lakh divided into 10,000 equity share of Rs.10/-. It is also mentioned in the appeal that issued subscribed and paid-up Share capital of the Appellant Company as on 31.03.2022 is Rs.1 lakh. As of 19.04.2021, the Directors of the Appellant Company Mr. Mahesh Kumar Singh (DIN:09130476), Mr. Satya Prakash (DIN:09130477) and Mr. Sunil Kumar (DIN:09130478) each owns 5100, 2700 and 2200 equity shares and have paid their full subscription amount as well.
3. As per the memorandum of association of the Appellant Company, it has been working in the computer industry

doing business of hardware and software consultancy, design and development of software and all other computer related activities and ancillary activities to achieve these objectives.

4. It is contended by the Appellant Company in the appeal document that they had been regularly involved in carrying on the business since its incorporation as per the provisions of the Companies Act, 2013 as evident from its current account with SBI Bank vide Current Account Number: 00000040288855096 and carrying out its daily transactions from this current account and has also complied with Goods and Service Tax Act and Income Tax Act. It has also been shown by the Appellant Company in the Appeal Document that as per the Audited Financial Statement ending on 31.03.2022, an amount of (-)Rs. 24,044/- is shown as closing balance with the head Surplus/Deficit in Statement of Profit and Loss.
5. However, due to negligence on the part of the professional and lack of professional guidance, they could not file Form INC-20A in due time, required to be filed with ROC informing about subscription of share capital and has also not sought commencement of business certificate. It is also stated that

inspite of reminders to the professional of the Appellant Company, this Form is not filed till date. It is also stated that due to the Company being struck off, it could not file Financial Statements and Annual Returns with ROC as required under the Act for the Financial Year 2021-22.

6. It has been further pleaded that the Appellant Company is in business agreement with many companies like Tata Services etc. and also got registered under the Goods and Services Tax Act and complying with the requirements of the Income Tax Act and also having turnover as per the latest returns filed with GST Authorities. However, striking off the Company, will cause a severe loss to both, the Government (revenue loss) in form of taxes and to the livelihood of the employees and business related to the Company.
7. It is further pleaded that though notice under STK-5 was published by the ROC at the website of Ministry of Corporate Affairs proposing to strike off the name of the Company, this public notice or any other notice or intimation was never served upon the Appellant Company or any of its Directors through registered post or any other mode by the ROC. Therefore, the Appellants could not get any opportunity

under the principle of natural justice to respond to the said public notice or to complete its Annual Filings for previous financial year.

8. It is further emphasized in the Appeal that the said default has occurred due to lack of proper professional guidance, oversight and inadvertent reasons and it has been undertaken that the Company shall file and complete its pending filing of form INC-20A with ROC as per the directions of this Tribunal and be cautious and diligent in future with respect to filing of the documents/forms with ROC and shall not make any such default in future.
9. Thus, it has been demonstrated in the appeal filed before us that the Appellant Company is actively involved in running of the business. However, due to the inadvertent mistake & negligence on the part of the management and professional, initially, Form INC-20A could not be filed resulting into striking off the Appellant Company from the Register of Companies maintained in the office of ROC and then, subsequently due to being struck off, Financial Statements and Annual Return for the year 2021-22 required under the Companies Act, 2013, could not be filed with the office of

ROC. Now, the Appellant Company has voluntarily admitted that it has not filed INC-20 A with ROC but is ready to file all the documents with ROC as per the directions. Therefore, prayer has been made in the appeal to pass an order for restoration of the name of the Appellant Company i.e. **“Nipro Infotech Pvt. Ltd.”** in the Register of Companies maintained by the office of ROC, Kanpur, Uttar Pradesh, so that necessary statutory compliances as per the Companies Act, 2013 can be made.

10. We have found that the company’s name was struck off on 06.12.2022 and this appeal is filed on 10.04.2023 , hence, the same is filed within the statutory time limit of three years and accordingly, this appeal is found to be maintainable, therefore, notice has been issued to the ROC Uttar Pradesh, Kanpur as well as to the concerned Assessing Officer of the Income Tax Department through the Nodal Officer, Principal Chief Commissioner of Income Tax, Lucknow calling for their reply/report on restoring of the name of the Appellant Company in the Register of Companies maintained by the ROC, Uttar Pradesh, Kanpur to satisfy ourselves whether such restoration of the name of the Appellant Company is in

the interest of justice and in public interest and appellant are genuinely interested in running the Company after its restoration and to ascertain whether removal of the name of the Company is justified in view of the grounds on which such order was passed by the ROC.

11. The ROC, Uttar Pradesh, Kanpur in a report filed before us on 30.6.2023, has justified striking off the name of the Appellant Company stating that the subscribers to the Memorandum have not paid the subscription which they have undertaken to pay at the time of incorporation of the Company and a declaration to this effect has not been filed within 180 days of its incorporation U/s 10A of the Companies Act in Form INC-20A and has also not sought the commencement of business certificate under the Companies Act 2013 and hence, the company cannot legally conduct its business. It is also reiterated that the show cause notice was issued to the company to adhere to the provisions of the Section 10A of the Companies Act, 2013 giving them good opportunity to comply with the provisions of the Act or to reply to the show cause notice issued. However, no reply to show cause notice issued to them, was received and hence,

the company was struck off from the Register of Companies. Therefore, the ROC opposed restoration of the name of the company stating that they should not be allowed to restore the name of the company as the Company has not complied with Law of the Land. However, despite opposing the restoration of the name of the company, the ROC has further stated in the report that the matter may be decided on its merit, subject to assurance by the company to file all the pending statutory returns and making of all the compliances of the Companies Act, 2013 and requisite fees/fines are paid. Therefore, we find that the ROC is not averse to the prayer of the Appellant Company for restoring of its name provided the statutory compliances are made by them after paying requisite fees/fines within a given period of time.

12. The Income Tax Department in its report filed on 17.1.2024, has reported that the Appellant Company has filed ITR-6 for A/Y-2022-23 declaring total income at Rs. Nil and has shown business from other services. Neither any regular assessment proceedings or reassessment proceedings have been initiated against the Company nor any other proceeding is pending, nor any demand is outstanding against the Company in

respect of the abovementioned assessment year. It is further stated in the report of the Income Tax Department that in case, the name of the company is restored, the same should be subject to the necessary compliance of Income Tax Law to be made by the Appellant Company.

13. Considering the facts and circumstances of the case as discussed in foregoing paras, we find that the company is engaged in computer business relating to hardware and software and complying with provisions relating GST as well as Income Tax. However, there is default of not filing Form INC-20A that is mandatory after incorporation of the company to inform to ROC about subscription to share capital by the signatories of Memorandum and seek the certificate of commencement of business, which now, the Company has given undertaking to comply with and ROC in the report has stated as may be allowed subject to payment of fines and penalties within a specified period of time . Considering these facts and circumstances of the case , we allow the instant appeal to the extent of directing the ROC, Uttar Pradesh, Kanpur to restore the name of the Appellant Company on the Register of Companies 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, changing the status of the Appellant Company from “**struck off**” to “**active**” and take such further action against the Appellant Company in accordance with the statutory provisions.

14. Taking into account the report of the ROC as discussed in para 7, the restoration of the Company’s name will be subject to the payment of the cost of Rs. 25000/- through online payment in *www.mca.gov.in* under the head “*miscellaneous fees*” by mentioning particular as “*Payment of cost for restoration of the company pursuant to orders in CP No.38/ALD/2023*” and also to make payment of Rs. 25000/- to the Prime Minister National Relief Fund.
15. This Appeal is disposed of on the terms directed above. The ROC shall give effect to this order only after perusal of the compliance report of the cost imposed. After due compliance with the above directions, the ROC, Uttar Pradesh, Kanpur shall publish the order for restoration of the name of the company in the Official Gazette under its office name and seal. The Appellant Company is directed to file all the statutory documents including Form INC-20A, Annual

Accounts and Annual Returns along with the prescribed fees and additional fees as ordered by the ROC, Uttar Pradesh, Kanpur as applicable under the Companies Act, 2013 within 45 days from the date on which its name is restored on the Register of Companies maintained by the Registrar of Companies, Uttar Pradesh, Kanpur. They shall also fulfil all the other relevant statutory compliances, such as under the Companies Act, 2013 and the Income Tax Act, 1961, etc. 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 the Companies, Uttar Pradesh or any other concerned Government Authority to take appropriate action(s) in accordance with law, for any other violations/offences, if any, committed by the Appellant Company prior to or during the period the name of the Company remained struck off.

16. The Registry is directed to send copies of the order through email forthwith to all the parties in the matter.
17. The appellant company is directed to deliver a certified copy of this order to ROC, Uttar Pradesh, Kanpur within 30 days of the receipt of the order.

18. Certified copy of the order be issued upon making an application by any concerned party with all requisite formalities.

19. *CP No.38/ALD/2023* stands disposed off accordingly.

-Sd-

**(Ashish Verma)
Member (Technical)**

Date: 8th May, 2024

-Sd-

**(Praveen Gupta)
Member (Judicial)**