

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

CP No.80/ALD/2022

IN THE MATTER OF:

*Petition under Section 252(3) of the Companies Act, 2013 read with
Rule 11 of the NCLT Rules, 2016.*

IN THE MATTER OF:

M/S ROYAL TOUCH EXPORTS PRIVATE LIMITED,

Through its director, Sh. Shameem Ahmed
#1237, Bhandra Patti, Hapur, UP 245101

.....Petitioner

VERSUS

1. REGISTRAR OF COMPANIES, KANPUR

37/17, Westcott Building, the Mall,
Kanpur-208001 Uttar Pradesh

..... Respondent No.1

2. INCOME TAX DEPARTMENT

Chief Commissioner of Income Tax (CAA),
PQM9+RMQ, Hapur Rd, Adarsh Nagar
Colony, Madhuban Colony, Meerut,
Uttar Pradesh 245101

.....Respondent No.2

Order pronounced on 16th April, 2024

CORAM: 1. Hon'ble Shri Praveen Gupta, Member (Judicial)

2. Hon'ble Shri Ashish Verma, Member (Technical)

PRESENT:

Sh. Karanveer Jindal, Adv. : *For the Petitioner*

Sh. Niraj Kumar Singh, Proxy for : *For the I.T. Department*
Sh. Gaurav Mahajan, Sr. S.C

NONE : *For the RoC*

ORDER

1. This Appeal has been filed on 31.8.2022 by **M/s Royal Touch Exports Pvt. Ltd.** (hereinafter referred as the Appellant Company) through its Director, Sh. Shameem Ahmed under Section 252(3) of the Companies Act, 2013, (hereinafter referred to as the Act) against the order of Registrar of Companies, Uttar Pradesh (hereinafter referred as “ROC/Respondent”) with prayer to restore the name of the Company i.e. M/s Royal Touch Exports Pvt. Ltd. in the Register of Companies maintained by ROC.
2. M/s Royal Touch Exports Pvt. Ltd. (hereinafter referred to as ‘Appellant Company’) was incorporated on 30.5.2012 under the Act bearing CIN- U15122UP2012PTC050757. The registered office of the Company is at #1237, Bhandra Patti, Hapur, U.P.- 245101. The copy of certificate of incorporation has been annexed as Annexure P-5 with the appeal.

- 3.** The Company is engaged in carrying on the businesses of manufacturing, processing, preserving, and refining a wide range of food products such as fruit pulps, fishes, eggs, poultry, seafoods, vegetables, mushrooms, canned and tinned foods, as well as processed foods. They also deal with protein, health, and instant foods, including baby and dietetic foods, cereals, beverages, cordials, tonics, restoratives, and aerated mineral waters. Additionally, the company is involved in the production of pet food, cattle feed, and consumable provisions for both human and animal consumption.

- 4.** The Petitioner submitted that the Authorized Share Capital of the Company as of 31.3.2022 is 50,000 equity shares of Rs. 10 each, amounting to Rs. 5,00,000 in total, and the issued, subscribed, and fully paid-up equity shares are 10,000 of Rs. 10 each, amounting to Rs. 1,00,000. The Company is managed by three Directors, namely Sh. Shameem Ahmed, Sh. Nasim Ahmed, who are also shareholders of the Company, holding 500 equity shares each, and the third Director is Sh. Tao Peng.

5. It is stated that the Appellant Company has defaulted in filing statutory documents, i.e., Balance Sheet and Annual Returns, since 2019. Consequently, the Company's name has been struck off by the Respondent from its Register of Companies pursuant to Section 248(1) of the Act due to non-filing of annual returns. A notice in Form STK-7 regarding this matter was published on 14.06.2022 removing the name of the Company from the Register of Companies and its dissolution. However, the Petitioner contends that they did not receive any show-cause notice or any opportunity of being heard but it is admitted that due to lack of knowledge and oversight on part of the Directors, they could not file the said statutory documents within time, leading to the removal of the Company's name from the Register of Companies.

6. As stated in Appeal, the Appellant Company has been an ongoing concern since its incorporation and has duly complied with all the regulatory requirements as prescribed by the Act. Copies of the Auditor's report and Financial Statements of the Company from the year ending on 31.3.2019 to 31.3.2022 and copies of acknowledgements for filing of the income tax return for the A.Y. 2019-20 to 2021-

22 have been annexed as Annexure P-9 (COLLY) and Annexure P-10 respectively with the appeal.

- 7.** In view of the facts and circumstances of the case as explained above, the Appellant Company has prayed to pass appropriate order to restore the name of the Company in the Register of Companies maintained by the office of the Registrar of Companies.
- 8.** After considering the above petition/appeal, notices were issued to ROC and the Income Tax Department calling for their reports to satisfy ourselves whether restoration of the company would be in the interest of justice and in the 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.
- 9.** The ROC/Respondent has filed reply stating that the name of the Appellant Company was struck off from the Register of Companies on account of default in statutory compliances by not filing statutory documents i.e. Balance Sheet and Annual Returns since 2019 in contravention to Section(s) 92/137 of

the Act respectively. Despite being given fair opportunity of being heard by way of show cause notice, the Company and its directors failed in fulfilling their mandatory duty of filing the statutory returns of the Company. However, the Respondent states that the matter may be decided on merits subject to assurance of the company to file all the pending financial statements with the of the of the ROC through MCA portal and heavy fine may be imposed on the company and its directors to ensure that the company becomes more diligent in timely compliance of the Companies Act, 2013 in future.

- 10.** The Income Tax Department has filed its reply/report, stating that the Company has filed return of income for A.Y. 2019-20, 2020-21 and 2021-22 showing gross total income as “zero” and the P&L statement for the years ending on 31.3.2019, 31.3.2020 and 31.3.2021 show no revenue from operations. However, returns of income for AY 2022-23 and 2023-24 have not been filed There are neither outstanding demands nor any assessment proceedings pending against the Company. Furthermore, the Director’s report for relevant assessment year has also not been attached to provide

information and indicate Company's performance and future prospects. As regards the verification on the address of the Company, it is stated that the nature of the property where the office at the registered address is located could not be verified whether it's an owned, leased or rented property and no documents in this regard has been put forward.

- 11.** Considering the facts and circumstances and response from the concerned statutory authorities connected with the functioning of the companies as discussed in aforesaid paras, we find that that the Appellant Company has been carrying on the business and also filing returns of income with the Income Tax Department regularly. However, Annual Returns for the year 2019 onwards were not filed with the ROC but it has been undertaken by the Company that it would file all the pending annual accounts and returns to ROC after its name is restored. Even ROC in his report has stated that the matter may be decided on merit subject to assurance from the Company to file all the pending financial statements and heavy fine may be imposed on the Company in case of restoration of the name of the Company as prayed in the Appeal. In order to show that the company is actively involved

in carrying on its business, copies of acknowledgements for filing of income tax returns for the A.Y. 2019-20 to 2021-22 as well as auditor's report and financial statements of the Company from the year ended on 31.3.2019 to 31.3.2021 have been submitted. As the company has been found to be having required resources for carrying on the business and it has been carrying on the business at the time when its name was struck off, we find that non-filing of annual returns along with financial statements with ROC is a default only technical in nature for which the Appellant has given undertaking to fulfill these requirements as per the Companies Act, 2013 and the Income Tax Act, 1961 as well. Nothing has been reported by the Income Tax Department adversely regarding existence of the Company and business being carried on by it except stating that the premises from which business is being carried on is owned by the Company or is taken on lease or rent is not clear, which we find as not to be material in casting any doubt on the existence of the Company and business being run by it.

- 12.** As the appeal for restoration of the name of the company has been filed after passing of order by the ROC in accordance

with the provision of Section 248(1) read with Section 248(5) striking off the name of the company from the Register of Companies and consequently dissolving it as per Notice published in STK-7, the relevant provision for filing of such appeal is Section 252(1) and not Section 252(3) in which application is filed when the Company having its name struck off following the provision of Section 248(2). Limitation period for filing of appeal u/s 252(1) is three years from the date of the order of ROC. In this case, order by the ROC has been passed on 14.06.2022 and appeal has been filed on 31.08.2022, which is within the limitation period of 3 years, hence the appeal has been found to be maintainable, though filed under wrong provision of Section 252(3) instead of being filed u/s 252(1). It is settled law that mentioning the wrong provision of law or not mentioning a provision does not invalidate any application or order. Therefore, mentioning of wrong provision is not fatal to the application if the power to pass the order on that application is available to the Court. In the instant case, we have already found that the appeal filed by the Appellant Company is maintainable u/s 252(1), hence we have considered this appeal as filed u/s 252(1).

13. Considering the facts and circumstances of the case as discussed in foregoing paras, 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 Law.

14. Taking into account the report of the ROC as discussed in para 9, the restoration of the Company’s name will be subject to the payment of the cost of Rs. 25,000/- through online payment in *www.mca.gov.in* under miscellaneous fees by mentioning particular as “*Payment of cost for restoration of the company pursuant to orders in Company Petition No. 80/ALD/2022*” and also to make payment of Rs. 25,000/- to the Prime Minister National Relief Fund.

15. This Petition/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 Company is directed to file all the statutory documents including 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. including filing of the pending returns of Income by the Appellant Company after restoration of its name by the ROC. 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 forthwith through e-mail to all the parties in the matter.
- 17.** The Appellant Company is directed to deliver a certified copy of this order with 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.** Company Petition No.80/ALD/2022 stands disposed off accordingly.

-Sd-

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

-Sd-

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

Date: 16th April, 2024