

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

CP NO.72/ALD/2023

IN THE MATTER OF:

[Under Section 252(3) of Companies Act, 2013]

IN THE MATTER OF:

SWEET PLASTIC PIPES PRIVATE LIMITED

Having its registered office at,

15, Katra Balsingh Etawah, U.P.

Through its member and shareholder

Shri Kamlesh Yadav

.... PETITIONER/APPLICANT

VERSUS

REGISTRAR OF COMPANIES, U.P.

37/17, West Cott Building, The Mall,

Kanpur - 208001

.... RESPONDENT

Order Pronounced on: 23rd April, 2024

Coram:

Mr. Praveen Gupta. : Member (Judicial)

Mr. Ashish Verma : Member (Technical)

Appearances:

Sh. Rishabh Govila, Adv. : For the Petitioner
& Applicant in IA No.01/2024
Sh. Shivendra Bahadur Singh, CGSC : For the RoC
Sh. Gaurav Mahajan, Sr. S.C. : For IT Deptt.
with Sh. Niraj Kumar Singh, Adv.

ORDER

1. This Appeal has been filed on 23.7.2023 by M/s. Sweet Plastic Pipes Private Limited (hereinafter referred as the “**Appellant Company**”), through its member and shareholder Shri Kamlesh Yadav (hereinafter collectively referred as the “**Appellant**”) under Section 252(3) of the Companies Act, 2013, (hereinafter referred as the “**Act**”) against the order of the Registrar of Companies, Uttar Pradesh, Kanpur (hereinafter referred as “**ROC/Respondent**”) striking off the name of the Company from the Register of Companies with prayer to restore the name of the Company M/s. Sweet Plastic Pipes Private Limited in the Register of Companies maintained by the ROC. Later, an IA No.1/2024 was filed on 02.01.2024 with prayer to treat the present petition as filed u/s 252(1) instead of 252(3) and the same has been taken on record vide order dated 06.02.2024 of this Tribunal.

- 2.** M/s. Sweet Plastic Pipes Private Limited, the Appellant Company, was incorporated on 22.3.1988 under the Companies Act, 1956 bearing CIN: U25209UP1988PTC009462. The registered office of the Company is at 15, Katra Balsingh Etawah, U.P.
- 3.** As per the Memorandum of the Association of the Company, it is incorporated with the object of carrying on the business of manufacturing, importing, exporting, supplying and dealing in all kinds of PVC products plastic, polythene, polysters, pipes etc.- and claimed to have started this business after its incorporation fulfilling all the requirements of the Companies Act, 1956.
- 4.** The Authorized and paid-up share capital of the Company is Rs. 40,00,000/-. The Company has shown to be having two directors namely Shri Kamlesh Yadav (DIN: 07030958) and Jitendra Singh but no DIN for Jitendra Singh has been mentioned and as per the latest Master Data generated on 19.07.2023 as attached with the Appeal, DIN of Shri Kamlesh Yadav is shown to have been surrendered.

- 5.** The Appellant company's name was struck off from the Register of Companies by the Respondent ROC because it hadn't conducted any business or operations for two consecutive financial years, and it hadn't applied for dormant status under Section 455 during that time. The Company received notification of this on 27.3.2017, but the Appellant claims they didn't receive any such notice and thus couldn't respond. In a compliance affidavit dated 04.03.2024, the Appellant clarified that the Company's name was struck off on 25.10.2019, not on 27.7.2017 as mistakenly stated.
- 6.** As stated in the Appeal, the Appellant Company has been an ongoing concern since its incorporation and has complied with all regulatory requirements prescribed by the Act. Copies of the Balance Sheets for financial years 2014-15 to 2018-19 have been annexed as Annexure No. 4 (Colly) with the appeal. In the Master Data of the company downloaded from the MCA website, as attached with the Appeal, the appellant company is shown to be Active Non-compliant.

- 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, Uttar Pradesh, Kanpur.
- 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 incorporation in contravention to Section(s) 92/137 of the Act. 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. Further, no objections were received from any person either. The Respondent ROC further states that the matter may be decided on merits subject to assurance of the company to file all the pending financial statements with the office 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 Appellant filed a rejoinder to the report filed by the ROC and reiterated that they were not in receipt of any show cause notice from the Respondent and have maintained all financial records including financial statements and profit and loss account. However, the appellant inadvertently could not file the same before the Respondent as required. The remaining averments are same as submitted in the Appeal filed and need not be repeated for the sake of brevity.

11. The Income Tax Department has filed its reply/report, stating that as per the Master Data, the authorised capital of the

Company is Rs. 15,00,000/ and paid-up capital is Rs.3,00,000/ while the main petition filed by the Appellant states the authorised share capital to be Rs. 40,00,000/-. The date of last AGM has also not been mentioned and no response has been submitted with regards to the Company not complying with statutory compliances since its incorporation i.e. FY 1988-89 onwards. The Company is also shown to have not filed ITR since incorporation despite being allotted a PAN. Furthermore, in the documents attached with the appeal, director's report is not available for the relevant assessment years, which could demonstrate the Company's financial position and performance for the particular financial year and further substantiate the fact that the company has been an ongoing concern and its future prospects.

- 12.** The Appellant has filed a reply to the Counter affidavit of the Income Tax department and submits that the increase in authorised share capital happened in the FY 2005-2006 and the directors subscribed to the said number of shares during this period. The said increase and subscription of shares

could not be uploaded in the portal due to non-filing of the statutory compliances.

- 13.** The Income Tax department has filed a supplementary affidavit, stating that the Company has not registered its PAN on the e-filing portal and has not filed its ITR since incorporation. There are neither outstanding demands nor any assessment proceedings pending against the Company. While the Company claims itself to be a manufacturing unit, it has not disclosed since when it has been carrying out this activity and to whom it is selling the manufactured products. The Company would be collecting CGST and SGST as an agent of the Union of India but cannot deposit the same without obtaining due registration under prevailing laws. Additionally, it has been reported that an 'on-spot' physical verification of the registered address of the Company was carried out by the Inspector of the Income Tax Department, who confirmed the existence of the Company at the given address.
- 14.** The Appellant filed IA No. 1/2024 on 02.01.2024 seeking condonation of delay since the limitation period for filing an

appeal under Section 252(1) of the Act is only three years from the date of the registrar's order and this application has been filed late by 11 months from the end of three years limitation period. Therefore, a prayer has been made to condone the delays of 11 months. It has been explained that due to heavy losses incurred, the Company experienced a slowdown in its business operations, resulting in the Appellant's inability to file its financial reports timely and therefore, the Notice of strike off dated 27.07.2017 in Form STK-7 was issued by the Respondent ROC by which the name of the Appellant Company was struck off from the Register of Companies. However, the same could not come to the knowledge of the Appellant as no notice in this regard was received by them. It is also submitted that during the Covid-19 lockdown, the Appellant Company could not rapidly adapt to the change in technology, however, after the lockdown was lifted by the Central Government, the Applicant Company has garnered sufficient resources to efficiently run its business as per the required industry standards. Therefore, when in the month of March, 2023, the Appellant Company decided to revitalise its operations and it took steps to restore its

business momentum and accordingly, it tried to file and submit its Annual Accounts and Balance Sheets with ROC for which it contacted its Chartered Accountant and it was only then that it came to know from the website of the Ministry of Corporate Affairs that the Company has been struck off from the rolls of the Register of Companies. Thereafter, it preferred an appeal for restoration of the company, which was required to be filed u/s 252(1) but it was inadvertently filed under section 252(3), which provides a limitation period of 20 years from the date of strike off. Section 252(1) on the other hand provides a period of only 3 years from the date of strike off to file an appeal against the said notification. In view of these facts as stated by the Appellant Company in its this IA No. 1/2024, it has been pleaded that the Appellant Company was constrained to file the present Appeal within 3 years of the limitation period. It is also pleaded that in the event this Tribunal is pleased to consider the original Company Petition no. 72 of 2023 filed u/s 252(3) as filed u/s 252(1), the Appellant Company is to be condoned for delay in filing of Appeal u/s 252(1) as time limit of 3 years has already expired and Appeal/Petition filed

was late by 11 months beyond the time limit of 3 years required u/s 251(1). Finally, it is prayed that if original Petition bearing CP No. 72 of 2023 is considered as filed u/s 252(1) and thereafter, the delay of approximately 11 months as explained above in filing of the Appeal u/s 252(1) is condoned, no prejudice will be caused to any of the parties in the matter since the Appellant Company in its original petition has also undertaken to make good any default on account of such non-filing of the balance sheets and annual reports. Considering the above pleas taken by the Appellant Company, we deem it fit to be in the interest of justice to condone the delay of 11 months and consider the Appeal on merit, however, such condonation of delay shall be on payment of cost of Rs. 25,000/- to be paid to Prime Minister Relief Fund.

- 15.** Considering the facts, circumstances, and responses from the concerned statutory authorities connected with the functioning of the companies as discussed in the aforementioned paragraphs, we find that though the Appellant Company has claimed to have been conducting

business and in support of its claim, it has also filed the Balance Sheets and Statement of Profit & Loss Accounts for the F.Y. 2014-15 to F.Y. 2018-19. However, it is undisputed fact that the Appellant Company has not filed any annual account to ROC and even the returns of income to the Income Tax Department since its incorporation in 1988 as this fact as reported by ROC and the Income Tax Department in their report has not been controverted by the Appellant Company in the rejoinder filed in response to these two reports. Only plea was taken that these returns and annual accounts could not be filed inadvertently. Even in the Appeal, it was mentioned that financial statements and annual returns were not filed since the year 2005 but on submission of the report by the ROC and Income Tax Department, it came to our knowledge that these returns and financial statements were not filed since 1988 when the Appellant Company was incorporated. Even PAN was not got issued by the Appellant Company, which is required to be obtained for filing of the Income Tax returns. During the course of hearing, it was emphasised by the Ld. Counsel of the Appellant Company that the Company was continuously engaged in the business

and manufacturing of the plastic pipes and in support of his contention, Financial Statements for the F.Y. 2014-15 to F.Y. 2018-19 were referred and also physical verification of the factory premises of the Appellant Company was got done through the Income Tax Department. In the report, the Income Tax Department reported that the Company exists at its registered office situated at Alampur Hauz, Agra Road, Etawah and found some equipment and machinery installed there. It is also reported that the premises are well maintained building fitted with 2 manufacturing units of PVC pipes which were in working conditions, raw material and finished material were found/arranged in bags/stacks. Certain photographs were also taken by the Inspector of the Income Tax Department, who visited the premises and attached with the report. This report of the Income Tax Department shows that the Company is carrying on business at present, though for the past years i.e. before F.Y. 2014-15, no evidence is available about carrying on of business by the Appellant Company. Even as per Master Data of Appellant Company available in MCA portal, it is shown as active but not compliant due to not filing of the statutory documents,

i.e., Balance Sheet and Annual Returns, since its incorporation. These evidence as brought before us reveal that the Appellant Company has never cared for complying with the statutory provisions either of the Companies Act, 1956 under which it was incorporated and later under the Companies Act, 2013. It has not even fulfilled the requirement of filing of necessary statutory form for informing to ROC when its authorised share capital was increased from Rs. 15,00,000/- to Rs. 40,00,000/- in F.Y. 2005-06. If contention of the Ld. Counsel of the Company about the Company being engaged in the business since its incorporation is accepted, it is also pertinent to note that it violated Income Tax Act, 1961 by not filing of Income Tax Returns and not getting PAN allotted. Now, the Company has undertaken to file all the pending annual returns and balance sheets, along with the requisite fees required under the law, after its name is restored and also, to file Income Tax Returns. As the company has been found to 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 by Notice in Form STK-7 27.07.2017, we find that non-filing of

statutory documents is only technical in nature for which the Appellant has given undertaking to fulfil these requirements as per the Companies Act, 2013 and the Income Tax, 1961 as well. However, we are also conscious of the fact that the Appellant Company has committed grave violations by the filing income tax returns as well as annual returns and financial statement since inception to the Income Tax Department as well as the ROC since its inception and therefore, even if it is restored in view of looking to its present status of running of business, such restoration would be subject to heavy cost for such violations and filing of all pending returns and statutory statements.

- 16.** Considering the facts and circumstances of the case as discussed in foregoing paras and taking into account the affidavit filed by the Appellant Company in response to reply/report of ROC, 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**” subject to payment of cost as mentioned in the next paragraph and after restoration of the name , filing of all pending Annual Returns along with Financial Statements since the date of incorporation in 1988 till F.Y. 2021-22 within 45 days of restoration of the name of the Company , failing which the ROC will be at liberty to take action as per the relevant provisions of the Companies Act, 2013.

17. Taking into account our decision as discussed in para 16 above, the restoration of the Company’s name will be subject to the payment of the cost of Rs.50,000/- 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 CP No. 72 /ALD/2023*” and also to make payment of Rs.1,00,000/- to the Prime Minister National Relief Fund apart from paying the cost of Rs.25,000/- for condonation of delay to the Prime Minister National Relief Fund as ordered in para 14 above.

18. This Petition/Appeal is disposed of on the terms directed above. The ROC shall give effect to this order only after getting the compliance report of the cost imposed as ordered in para 17 above. 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 getting PAN allotted to the Appellant Company and filing of all pending Income Tax Returns. 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.

- 19.** The Registry is directed to send copies of the order through email forthwith to all the parties in the matter.
- 20.** 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.
- 21.** Certified copy of the order be issued upon making an application by any concerned party with all requisite formalities.
- 22.** CP No. **72/ALD/2023** stands disposed of accordingly.

-Sd-

(Ashish Verma)
Member (Technical)

-Sd-

(Praveen Gupta)
Member (Judicial)

Date: 23rd April, 2024