

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

**C APPEAL No.15/ALD/2022**

(In the matter of Section 252(3) of the Companies Act,  
2013)

**In the matter of:**

**FOSTERIDEAZ TECHNOLOGIES PVT. LTD.**

Having its registered office at,  
Nithari Sector-31, Noida,  
Gautam Buddha Nagar, U.P. 201301

**...Appellant No.1/ Appellant Company**

**Through its Directors,**

**1. Shashanka Chaudhary,**

S/o Virendra Kumar,  
R/o 14/149, Surya Nagar, Binoli Road,  
Baraut, Baghpat,  
U.P. – 250611

**...Appellant No.2**

**2. Puneet Sanadhya,**

S/o Atul Sharma,  
R/o B-530, Civil Lines, Opp. Civil Court, Barabanki, U.P. –  
225001

**...Appellant No.3**

***Versus***

**1. Registrar of Companies, Kanpur,**

10/499 B, Allenganj, Khalasi Line,  
Kanpur 208002

**...Respondent No.1**

**2. Union Of India, Through Secretary,**

Ministry of Corporate Affairs,  
A Wing, Shastri Bhawan, Garage No.14  
New Delhi – 110001

**...Respondent No.2**

**3. Income Tax Department**

Ward No.5(1)(1), Gautam Buddha Nagar,  
Noida, U.P.

**...Respondent No.3**

**ORDER PRONOUNCED ON: 23.05.2023**

**Coram:**

**Sh. Praveen Gupta, Hon'ble Member (Judicial)**  
**Sh. Ashish Verma, Hon'ble Member (Technical)**

**PRESENT-**

Ms. Gunjan Mittal, Adv. : For Appellants  
Sh. Pradeep Singh Sisodia, CGSC : For ROC, Kanpur

**ORDER**

This Appeal has been filed on 26.08.2022 by Mr. Shashanka Chaudhary and Mr. Puneet Sanadhya (hereinafter as Appellant no.1 & 2, respectively), Directors of Fosterideaz Technologies Pvt. Ltd. under Section 252(1) of the Companies Act, 2013, (hereinafter referred as the Act) praying for restoration of the Company's name i.e. Fosterideaz Technologies Pvt. Ltd. in the Register of Companies maintained by Registrar of Companies, Uttar Pradesh (hereinafter referred as "ROC/Respondent No.1").

2. Fosterideaz Technologies Pvt. Ltd. (hereinafter called as 'Company') was incorporated on 05.01.2010 under the Companies Act, 2013 bearing CIN: U72300UP2010PTC039165. The Company is carrying on the software business development services, e-commerce

related services, to publish and author multimedia and internet etc. The Authorized Share Capital of the Company is Rs.1,00,000/- consisting of 10,000 equity shares of Rs.10/- each. Issued subscribed and paid-up Share Capital is also 10,000 equity shares of Rs.10/- each amounting to Rs.1 lakh.

3. It is stated that the Company has defaulted its statutory compliances namely, failure to filing of the Balance Sheet and Annual Returns since 2020. Consequently, the ROC, has initiated proceedings under Section 248(1) of the Companies Act, 2013 to strike off the name of the Company from the Register maintained by the ROC, Uttar Pradesh.
4. It is also stated that the Petitioner Company did not receive any show cause notice, nor was afforded any opportunity of being heard, before the ROC had proceeded to issue notice under Section 248(5) of the Companies Act 2013 publishing the name of the Petitioner Company in the notification dated 08.06.2022. The list of struck off companies issued by the Respondent no.1/ ROC, Kanpur, which is annexed as Annexure 3 with the present application and the name of the company appear at Serial No.1394 of the said list. The

Directors of the Company came to know the status of the Company has been marked as 'struck off' from the website of the Registrar of Companies while checking the Company's Master Data.

5. In its instant application, the company presented following facts for restoration of the name of the company in the register of RoC.

*a. The Appellants hereby submit that they were duly active in doing business activities and were continuously engaged in the business in the efficient and prospective manner since its incorporation, and are equally interested in carrying on the business under the same name and style. But due to recent covid spikes, affected the business. It is also stated that the company is a going concern entity and has tangible assets and also the liabilities and responsibilities towards the unsecured creditors and its employees. Copy of invoices is annexed as Annexure-4 with the present application.*

*b. The Appellants submit that due to Covid outbreak suffered badly a huge loss of revenue and business comes to a standstill for certain period and therefore the balance sheet*

*for the year 2020 and 2021 could not be filed within stipulated statutory period, and upon resuming the business the Appellants have filed the balance sheet and annual return for the Financial Year 2019-20. Copy of AOC 4 and MGT-7 for the said FY is annexed as Annexure-5 with the present application. Thereafter, it is submitted that the balance sheet and annual return for the FY 2020-21 has also been prepared and shall file the same in a due course of time. Copy of the audited report, balance sheet for the FY 2020-21 is annexed as Annexure-6 with this application, which shows the Profit and Loss account for the FY 2020-21 of the Appellant Company, were (28,377/-), (5,390/-) in Balance Sheet.*

*c. That it is further submitted that the Appellant Company has been carrying on its operations on a going concern basis since its incorporation. Hence, for the sole reason that inadvertently the Appellant Company failed to file the statutory returns in time, striking off of the name of the Appellant Company from the Register of Companies maintained by the Respondent would result in bringing the working of an operating Company to stand still, thereby adversely affecting not only the Appellant Company but its shareholders, employees and*

*other stakeholders and dealing parties.*

*d. It is further more submitted that the present strike off, will result in the three folded loss, which includes the Taxes that are paid to the Government, the loss of the employment by the causal employees of the Appellant who are required by time to time will also result in the indirect loss of employment who are indirectly associated with the Company, and the Shareholders and Appellant itself in the form of the Investments made and goodwill earned in these years from hard work as otherwise the Shareholders and Directors will have to start from scratch in establishing another company which will be very harsh on the various stakeholders of the Appellant as well.*

*e. That the Appellant Company have Cash and Bank Balance of Rs.1,04,049.51/- and Current Assets of Rs.3,63,590.05/-, and whereas, the Company wanted to run the business, it is quite capable as the above figures are as per the last audited balance sheet of Financial Year ending 31<sup>st</sup> March, 2021 showing at in cash & bank balances and current assets respectively of Fosterideaz Technologies Pvt. Ltd. Moreover, as per the current Bank Statement as on 28.06.2022, there*

*were several transactions and the balance was Rs.1,63,081.56/- and the Bank Statement is annexed hereto and marked as Annexure-8.*

6. Ld. Counsel representing the Appellants has also filed an IA No.48/2022 on 15.12.2022 vide diary no.925 seeking prayer to defreeze the Bank Account i.e. ICICI Bank, B1/45, Central Market, Sector 50, Noida-201301 bearing A/c No.628405017118.
7. It is further stated that the delay in filing the Balance Sheet has occurred accidentally without any mala fide or willful intention on the part of the Appellants and is not of a nature to prejudice the position of Creditors or Shareholders of the Appellant Company. The Company has been active since incorporation and prepared accounts on going concern basis and has also been maintaining all the requisite documentation, as per the provisions of the Companies Act, 2013. The Appellants are ready and willing to pay such amount by way of fine as applicable and willing to make all necessary compliance with regard to filing of statutory document/statements for Financial Year 2020-21 and further.

8. It is also stated that the Appellant Company ever since its incorporation, is duly complying with filing of its income tax return regularly. The copy of the Income Tax Return for the FY 2020-21 is annexed as Annexure-7 with the present petition.
9. The Appellants categorically submitted that they have not previously filed any application, writ petition or suit regarding the matter in respect of which this application has been made, before any Court of Law or any other authority or any other Bench of the Board and also, no such application, writ petition or suit is pending before any of them.
10. The ROC filed its report on 21.03.2023 vide Diary No.1009 submitting that following observations :  
  
*“4. That it is pertinent to mention here that neither any reply to the show cause notice has been received from the company nor its directors nor they have filed statutory returns i.e. Balance Sheets and Annual Returns since 2020 with the office of the Respondent on MCA Portal. Further, no objection was received from any person. This contravenes the provision*



*of Section 92/137 of the Companies Act, 2013 respectively compelling the respondent to believe that the Appellant Company was not carrying on any business or was not in operation.*

*5. That it is submitted that the company has failed to file its Annual Return and Balance Sheet since 2020 and now when the name of the company has been struck off due to their willful default they have woken up from their long sleep and to evade from their liability they are making a baseless and frivolous stories and are now prepared and ready to file their belated Statutory Returns to facilitate the filing of present Appeal for restoration of the name of the company.*

*6. It is pertinent to mention here that Striking off companies under Section 248 of the Companies Act, 2013 and Directors Disqualification under Section 164 read with 167 of the Act are two separate provisions. Under Section 248 of the Companies Act, 2013, the ROC initiated action against erring companies by issuing statutory Notices as provided under law but under Section 164 of the Act, the directors attain disqualification due to their own misconduct of non-filing of Statutory Returns for three consecutive financial years by*

*"operation of law". Further, a company struck off under Section 248(5) of the Act can revive itself by making application under Section 252 of the Act before the Hon'ble NCLT but no specific remedy for removal of disqualification is prescribed under the provisions of the Companies Act, 2013.*

*7. That Section 167(3) of the Companies Act, 2013 inter alia states "Where all the directors of a company vacate their office under any of the disqualifications specified in sub-section (1), the promoter or, in his absence, the Central Government shall appoint the required number of directors who shall hold office till the directors are appointed by the company in the general meeting". So, in terms of the provision of Section 167(3) of the Companies Act, 2013, new directors may be inducted in case all the directors of the company got disqualified. The applicant can avail option as available in terms of Section 167(3) of the Companies Act, 2013 for enabling the company to become Active and to file pending returns/financial statements by inducting new directors. It is important to mention here that this Hon'ble Tribunal U/s. 252 do not have the jurisdiction to restore DIN of directors under provisions of the Companies Act, 2013, who have been disqualified and their DIN*

*deactivated by their own misconduct as mentioned above.*

*8. This sub-section stipulates that in the event that all the directors of the company vacate their offices by reason of having incurred any of the disqualifications enumerated u/s. 167(1) of the Act, the promoter of the company or in his absence, the Central Government shall appoint the required number of directors who will hold office till such time that new directors are appointed by the shareholder at the general meeting. The subsection is intended to ensure that the operations of the company are not in any way, jeopardized by the instability caused to the company or its board by the vacation of office by all the directors due to any of the circumstances provided in the law.*

*9. Keeping in view of the facts and circumstances stated above, the company does not deserve to be restored. However, the matter may be decided on its merit, subject to the assurance by the company to file all the pending statutory returns including the Balance Sheets and Annual Returns etc. with the office of answering respondent through MCA portal.*

## **PRAYER**

*Therefore, in view of the facts, reasons and circumstances mentioned above, it is most respectfully prayed that the present Company Petition liable to be dismissed with heavy cost against the petitioners subject to the condition that all the filing to be made under the provision of Companies Act 2013 in MCA21 registry with requisite fee/Addition fee within a given period of time.*

*Further this Hon'ble Tribunal may gracious to pass any order which deem to be fit, subject to the assurance by the company to file all the pending financial statements with the office of the answering respondent through MCA Portal.”*

11. Against the above report of the ROC, the applicants submitted in Rejoinder as under :-
  - a. *The applicants stated in the rejoinder with regard to the filing of returns, that from the perusal of the master data of the company maintained with the portal of Ministry of Corporate Affairs, it is admitted fact that the appellant filed the Balance Sheet and Annual Return for the FY 2020 and hence the contents of the filed reply is evident of the false*

*averments which leads to creates a confusion in the minds of this Tribunal to prove a falsity of the story as set up by the respondent. Further, it is stated that the averment with reference to the issuance of show cause notice by the respondent no.1 to the appellant is also false since none of the document was received by the appellant before the respondent struck off the name of the appellant company from the register of companies on account of default in statutory compliances and therefore the question of placing the reply to show cause notice does not arise in this situation.*

- b.** *It is also submitted that the averments as sought to have been projected by the respondent are nothing but a sham and bogus defense and falseness of the averments itself is evident from the documents filed by the applicant herein and which are highlighted in details in the forgoing paras of this rejoinder at the relevant places. It is further submitted that the Appellant Company is a going concern company has tangible assets with the company and also has the liabilities and responsibilities towards the unsecured creditors and employees. However, due to*

*Covid outbreak suffered badly a huge loss of revenue and business comes to a standstill for certain period and therefore statutory compliances of filing the balance sheets for the period 2021 could not be met out during that period. However, immediately upon resuming of office after Covid outbreak, prepared the Balance Sheet for 2021 but by the time the name of the company was struck off due to inactions of the respondent no.1.*

*c. It is also submitted by the Appellants that due to the inactions of the respondent no.1, the Bank account of the appellant company also got freeze and due to the same, the appellants could not meet out the liabilities and suffer huge loss of revenue. The copy of letter issued by the Appellant's Bank is also annexed as Annexure-1 with the rejoinder.*

12. We have considered the above reply of ROC as well as rejoinder filed by the Appellants and we find that nothing has been reported by ROC about any serious violation made by the company except not filing of Annual Returns which can be filed with fine and penalty for such default and the appellant is also ready for the same to continue with

running of its business. In this regard, the ROC in his report has also finally submitted that despite opposing the appeal for restoration of the Appellant Company that appropriate order as deem to be fit may be passed by this Tribunal subject to assurance by the Company to file all the pending financial statements with the office of ROC through MCA portal.

13. As regards the Income Tax Department, despite issuing notice repeatedly and also to the nodal officer, Principal Chief Commissioner of Income Tax, Lucknow as per letter dated 17.03.2023 of the CBDT, no reply/ report has been received from the officer of the Income Tax Department having jurisdiction over the appellant company raising any objection in the present Appeal. Therefore, we are of the opinion that there is no objection from the Income Tax Department on restoring the name of the Appellant Company to the Register of ROC.
14. 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 it in the interest of justice to allow the instant

petition to the extent of directing the ROC, Uttar Pradesh, Kanpur to restore the name of the applicant company on the Register of Companies 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 and take such other and further action against the Petitioner Company in accordance with the statutory provision.

15. The restoration of the Company's name will be subject to the payment of the cost of Rs.25,000/- (Rupees twenty five thousand only) through online payment in [www.mca.gov.in](http://www.mca.gov.in) under miscellaneous fees by mentioning particular as "Payment of cost for restoration of the company pursuant to orders in C Appeal No.15/ALD/2022."
16. This Petition 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. 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 decided by the ROC, Uttar Pradesh, Kanpur 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 the Income Tax Act, 1961, etc., in accordance with law.

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 in the registry of this Tribunal by the appellants/ petitioners.

**IA No.48/2022**

19. This IA has been filed with a prayer for defreezing of the bank account of the appellant company maintained with ICICI Bank, B1/45 Central Market, Sector 50, Noida-201301 bearing A/c No.628405017118. The said IA had been filed subsequent to the filing of this Appeal. The appeal has been allowed by us as per the above order. In view of this, we are not inclined to pass any separate order in the present IA and the appellant company would be at liberty to take up the matter with the concerned bank for defreezing of their

account in accordance with law and on fulfillment of the requirements of the banking rules as may be required by the Bank authorities, for the said purpose.

20. C Appeal No.15/ALD/2022 and IA No.48/2022 are disposed off accordingly.

*-Sd-*

**(ASHISH VERMA)  
MEMBER (TECHNICAL)**

*-Sd-*

**(PRAVEEN GUPTA)  
MEMBER (JUDICIAL)**

***23<sup>rd</sup> May, 2023***