

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

**CP No. 57/ALD/2023 (RCP (CA) No.2/ALD/2023**

**IN THE MATTER OF:**

An Appeal under Section 252(3) of the Companies Act, 2013.

**IN THE MATTER OF:**

Gangakalash Health Care Pvt. Ltd. & Anr.

Having its Regd. Office at

Vidhya Nagar, Naini, Allahabad, U.P.-211008

**.....APPELLANT**

**Versus**

**REGISTRAR OF COMPANIES U.P.,**

37/17, WESTCOTT BUILDING

THE MALL, KANPUR-208001, U.P.

**.....RESPONDENT**

**Order pronounced on: 23<sup>th</sup> April, 2024**

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

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

**PRESENT:**

Sh. Yash Tandon, with

*: For the Petitioner*

Sh. Anshuman Mishra, Adv.

Sh. Niraj Kumar Singh for  
Sh. Krishna Agarwal, Sr. S.C.

: *For the Income Tax  
Department*

Sh. Shivendra Bahadur Singh, CGSC

: *For the ROC*

**ORDER**

1. This Appeal has been filed on 08.05.2023 by M/s Gangakalash Health Care Pvt. Ltd. and Anr, (hereinafter referred as the Appellant/Appellant Company), through its Directors Mr. Anil Kumar Dwivedi and Mr. Prashant Kumar Dwivedi 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 Gangakalash Health Care Pvt. Ltd. in the Register of Companies maintained by the ROC. Later, an affidavit was filed on 31.01.2024 to treat the present petition u/s 252(1) instead of 252(3) and the same has been taken on record vide order dated 16.04.2024 of this Tribunal.

**2.** The main Appeal was earlier dismissed for want of prosecution vide order dated 11.07.2023. Subsequently, a restoration application REST. APPL. No. 01/2023 was filed for restoration of CP No. 57/ALD/2023 vide which appeal for revival of the Company was filed. the Appellant vide order dated 31.07.2023 withdrew the restoration application REST. APPL. No. 01/2023 with liberty to file with better particulars and therefore, the said restoration application was dismissed as withdrawn. Then the Appellant filed a second restoration application bearing RST.APPL.No.02/2023 for restoration of the main petition bearing CP No. 57/ALD/2023 which was allowed and accordingly the main appeal for revival of the Company i.e. CP No. 57/ALD/2023 is restored and it is decided in this order.

**3.** M/s Gangakalash Health Care Pvt. Ltd., the Appellant Company was incorporated on 07.09.2020 under the Companies Act, 2013 bearing CIN: U85300UP2020PTC134106. The registered office of the Company is at Vidhya Nagar, Naini, Allahabad, U.P.-211008.

- 4.** The Appellant Company was established for the healthcare hospital business and has since then maintained necessary infrastructure, land, and documentation according to the provisions of the Act. However, the project was delayed due to the Covid-19 pandemic. Nevertheless, the necessary licensing procedures for the construction of the hospital building and healthcare business were pursued.
- 5.** The Appellant company has an authorized, subscribed, and fully paid-up capital of Rs. 1,00,000 and is managed by two directors, namely Anil Kumar Dwivedi (DIN-08867152) and Prashant Kumar Dwivedi (DIN-08867213). The learned Counsel representing the Appellant stated in the Supplementary affidavit dated 31.1.2024 that both directors have each paid an amount of Rs. 50,000/- as a subscription amount on 15.9.2020, and two separate affidavits, both dated 31.1.2024, have been filed in this regard.
- 6.** The name of the appellant company is stated to have been struck off from the Register of Companies by the Respondent ROC due to the reasons that the Appellant Company has not

commenced its business within one year of its incorporation and has not made any application within such period for obtaining the status of a dormant company under Section 455. The Company has also not filed the statutory documents i.e. Financial Statements and Annual Return for the year ending March 2021 till March 2022. A notice in Form STK 7 dated 02.12.2022 was issued whereby the name of the Company was struck off from the Register of Companies. However, the Appellant contends that they did not receive any notice from the Respondent and therefore could not reply to the same or take action in that regard.

- 7.** As stated in the Appeal, the Appellant Company has been an ongoing concern since its incorporation, but the Directors of the Company inadvertently could not file the statutory documents, leading the Respondent to assume that the Company has been inoperative since its incorporation. Copies of the legal documents of the property where the hospital building is proposed to be constructed have been annexed as Annexure 3 (Colly.), along with financial statements for the Financial Years 2020-2021 and 2021-

2022. Additionally, Income Tax Returns for the assessment years 2021-22 and 2022-23 have been annexed as Annexure A-4(Colly) and Annexure A-5 (Colly.) respectively with the appeal.

- 8.** 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.
  
- 9.** In response to above appeal filed by the Appellant Company, 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.

**10.** The ROC/Respondent has filed reply submitting that the name of the Appellant company has been struck off from the register of companies on account of default of subscribers of memorandum not paying the subscription which they had undertaken to pay at the time of incorporation of a company and a declaration to this effect has not been filed within 180 days of its incorporation under Section 10A (1) of the Act. Despite being given fair opportunity to reply to the show cause notice, the company and its directors have not complied with the compliance under section 10A read with Section 248(1)(a) indicating that the company was not carrying on any business. The Company has also not sought the commencement of business certificate under the Act and therefore liable to be struck off. However, the Respondent states that the matter may be decided on merits subject to assurance of the company to comply with all the pending requirements under the Act.

**11.** The Appellant filed a rejoinder affidavit on 11.12.2023, and submits that the shareholders deposited their subscription money against the subscribed and allotted shares but

inadvertently could not inform the ROC about the same. Proof of the said deposits in the bank statement has been annexed as Annexure A-6 with the appeal and also, affidavits of both the directors/shareholders were also filed in this respect. The Appellant reiterates that they were not in receipt of any notice from ROC for them to reply to and further undertake to comply with all the statutory compliances upon restoration of the Company's name in the Register of Companies.

- 12.** The Income Tax Department has filed its reply/report, stating that no ITR exists on the e-filing website for the AY 2021-22, 2022-23, and no outstanding tax demand is due against the Company. The business loss for AY 2021-22 is shown to be Rs. 20,000, and for 2022-23, it is Rs. 15,361. It has also 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 reported that the Company existed at the given address. Furthermore, the system database of the Income Tax department shows that the Company has filed financial statements for the FY 2021-22 and 2022-23.



**13.** 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 both shareholders of the Appellant Company have paid the share subscription amount at the time of formation of the company and also the business has commenced, but inadvertently they could not file the requisite Form 20A as per Section 10A (1)(a) of the Companies Act 2013 and Rule 23A of the Companies (Incorporation) Rules, 2014. The business by the Appellant Company has also commenced. In order to show that the company is actively involved in carrying out its business, copies of Bank statement, financial statements and ITR along with document of the property which is in the name of the Appellant Company of the Appellant Company has been submitted. As the share subscriptions have been made by the company and business has also commenced, non-filing of requisite form 20A is only technical in nature for which the Appellant Company has given undertaking to fulfil these requirements, having complied with the required action of share subscription and commencement of business.

**14.** Therefore, we allow the instant appeal to the extent of directing the ROC, Uttar Pradesh, Kanpur to restore the name of the applicant 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 Petitioner Company in accordance with the statutory provisions.

**15.** As regards to the second prayer in clause (e) of para 10 for issuing direction to reactivate DIN of the Directors of the Appellant Company and allowing the Directors to access the MCA-21, we are not inclined to adjudicate upon this ground as the same is not covered under the provision of section 252(1) in which this appeal is filed and also this Tribunal has no jurisdiction to deal with such prayer. However, the Appellant would be at liberty to move appropriate petition to seek any relief as prayed in this clause of the prayer.

- 16.** 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 miscellaneous fees by mentioning particular as "*Payment of cost for restoration of the company pursuant to orders in CP No. 57/ALD/2023 (RCP CA No.2/ALD/2023)*" and also to make payment of Rs. 25000/- to the Prime Minister National Relief Fund.
- 17.** 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. 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 Form 20A under the Companies Act, 2013 along with pending annual accounts and pending returns of income under the Income Tax Act, 1961. 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 petitioner company prior to or during the period the name of the Company remained struck off.

- 18.** The Registry is directed to send copies of the order through email forthwith to all the parties in the matter.
- 19.** 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.

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

**21. CP No. 57/ALD/2023 (RCP CA No.2/ALD/2023)** stands disposed off accordingly.

*-Sd-*

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

**Date: 23.04.2024**

*-Sd-*

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