

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

ORDER SHEET OF THE HEARING ON 12th APRIL, 2024, 10:30 A.M.

CP/26/GB/2023

**Present: 1. Hon'ble Member (Judicial), Shri H.V. Subba Rao
2. Hon'ble Member (Technical), Shri Satya Ranjan Prasad**

| | |
|-------------------------|--|
| IN THE MATTER OF | Charlie Tea Private Limited Vs Registrar of Companies, NER |
| UNDER SECTION | U/s 252(3) of Comp. Act, 2013 |

For Petitioner (s) : Mr. K. B. Bagadia, CS.

For Respondent (s) :

ORDER

Order Pronounced through VC *vide* separate sheets.

Sd/-

**Satya Ranjan Prasad
Member (Technical)**

Sd/-

**H.V. Subba Rao
Member (Judicial)**

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

CP No. 26/GB/2023

In the matter of:

An Application under Section 252 (3) of the Companies Act, 2013; An application seeking restoration of the name of the company on the Register of Companies maintained by the Registrar of Companies, NE Region, Guwahati;

-And-

In the matter of:

Charlie Tea Private Limited, CIN No. UI5491AS2020PTC020406, registered office at 2 No Bokulon, NC Duliajan, Dibrugarh 786191, Assam represented through its Shareholder Mr. Ved Prakash Sharma (DIN: 08858065);

... Struck Off Company/Appellant

-Versus-

The Registrar Of Companies, Guwahati, NER, having its office at 1st Floor, BSNL Bhawan Building, Ananda Ram Baruah Road, Pan Bazaar, Guwahati, Assam- 781001

... Respondent

Coram:

Shri H.V Subba Rao : Member (Judicial)

Shri Satya Ranjan Prasad : Member (Technical)

Appearances (through video conferencing)

For the Applicants : Mr. K. B. Bagadia (CS)

For the Respondent : Mr. D.N. Chowdhury (ROC, NER)

**Order reserved on: 27.03.2024
Order pronounced on: 12.04.2024**

ORDER

1. This Company Petition has been filed by Mr. Ved Prakash Sharma in the capacity of Shareholder of **Charlie Tea Private Limited** (CIN No. UI5491AS2020PTC020406) under Sec. 252(3) of the Companies Act, 2013 ("Act") for restoration of name of the

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

CP No. 26/GB/2023

struck off company in the register of companies, maintained in the office of the Registrar of Companies, NER.

2. The Company was incorporated on 01.09.2020. It is stated that the name of the Company got struck off on 18.10.2022, pursuant to Section 248(1) (d) and Rule 7 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 since the subscribers to the memorandum had not paid the subscription which they had undertaken to pay at the time of incorporation of a company and a declaration to this effect was not filed within one hundred and eighty days of its incorporation under sub--section (1) of section 10A.
3. The authorized share capital of the Company is Rs. 10, 00,000 (Rupees Ten Lakh Only) and Paid-Up Capital of the Company is Rs. 1, 00,000 (Rupees One Lakh Only). The Appellant Company was managed by two Directors since its incorporation and commencement of business, Mr. Ved Prakash Sharma (DIN-8858065) and Mr. Kushal Sonowal (DIN-8858064).
4. The Appellant submits that the Respondent while striking off the Appellant company's name in its Register had not followed the procedure prescribed under Section 248(1) of the Companies Act, 2013 read with Rule 3(2) of the Companies (Removal of Name of Companies from the Register of Companies) Rules, 2016, since notices in Form STK-I were not sent to the Company and all the Directors of the Company by registered post or by speed post. No notice under sec 248(4) of the Companies Act, 2013 read with Rule 7 of the Companies (Removal of Name of Companies from the Register of Companies) Rules, 2016 in prescribed form STK-5 was issued by the Respondent. The Appellant Company did not receive any show cause notice, nor was it afforded any opportunity of being heard before company was struck off by the Respondent.
5. The Appellant submits that the Company was incorporated on 01.09.2020, when the world was facing Covid-19 pandemic and lockdowns and the Appellant had received its entire subscription amount by 16.10.2020 i.e. within 180 days from the date of incorporation in accordance with Section 10A of the Companies Act, 2013, but failed to file Form INC-20A with the Respondent.
6. The Appellant further submits that due to continuous problems in business faced by the Directors, they decided to defer the commencement of business of the Company.

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

CP No. 26/GB/2023

During the late 2022, the Directors again decided to commence its business operations and in furtherance of the same, various applications to Government/Regulatory authorities were made and necessary licenses and approvals have been obtained or are under the process of obtaining the same by the Company. List of the few of the prominent applications are as follows:

- i. Consent to Establish under Section 25 of Water (Prevention & Control of Pollution) Act, 1974 and Section 21 of Air (Prevention & Control of Pollution) Act, 1981 has been obtained from Assam State Pollution Control Board.
 - ii. An amount of INR 200500 (Rupees Two Lakhs Five Hundred only) has also been deposited with Assam State Pollution Control Board towards necessary costs for making the application.
 - iii. An application has been made for submission of Expression of Interest (EoI) for setting up of a new Tea Manufacturing Unit under Accelerated Scheme guidelines to Tea Board India.
7. The Appellant submits that during making the aforesaid applications, upon checking the master data of the Company, it came to their knowledge that the name of the Company was “struck off” from the file/register maintained by the Registrar of Companies, Guwahati, NER. The Appellant further submits that the Company had duly complied with all the requirements of Section 10, except for the filing of Form INC-20A and the same was not filed mainly due to economic unrest created by Covid pandemic.
8. The Appellant submits that in the event of revival of the Company and restoration of the name of the Company, the Appellant Company undertakes to file all the pending statutory returns and documents with the Respondent along with normal and additional fee and also abide by the terms and conditions, if any.
9. Notices were issued to the Registrar of Companies, Guwahati, NER. The Registrar of Companies, Guwahati, NER has submitted a report dated 19.12.2023. Shorn of unnecessary details, observations made in the report of ROC, NER are reproduced hereunder:

9.1 The competent authority has struck off the name of the Appellant Company pursuant to Clause (d) of Sub-section (1) of Section 248 of the Companies Act, 2013 since he

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

CP No. 26/GB/2023

had reasonable cause to believe that in the matter of M/s Charlie Tea Private Limited, subscribers to the memorandum have not paid 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 one hundred and eighty days of its incorporation under subsection (1) of section 10A of the Companies Act, 2013 with the Office of Registrar of Companies, Guwahati.

- 9.2 *It is evident from the MCA records that the Company has not filed e-form INC-20A-Declaration for commencement of business with the office of the Respondent till date.*
- 9.3 *Besides the non-filing of e-form INC-20A-Declaration for commencement of business, the company has not filed its Balance sheet and Annual Return for the financial year 2021-22 and financial year 2022- 23 with the Office of the Respondent.*
- 9.4 *ROC, NER issued notice in Form STK-1 on 27.06.2022. Further, notice in Form in STK-5 dated 02.09.2022 published in two newspaper (English and Assamese) on 06.09.2022 and also in the Official Gazette on 10.09.2022 and finally STK-7 dated 18.10.2022 was issued by the ROC reflecting the name of the company strike off w.e.f. 16.11.2022.*
- 9.5 *That in this regard it is submitted that presently the status of the company is 'struck off' company can be allowed to be revived under section 252 of the Companies Act, 2013 on its own merits directing Appellant to file all the pending statutory returns and e-form INC-20A-Declaration for commencement of business with the additional fees as applicable within 30 days from the date of passing of the order, failing which the respondent shall take action to strike off the name of the company again without giving any further notice to the petitioner. The Company and its directors are liable for action with regard to delay on filing of statutory returns and declaration for commencement of business.*
10. Heard the Ld. Counsel appearing for the Petitioner. Material on record perused. It is noted that ROC, Guwahati, NER in his report dated 19.12.2023 has *inter alia* observed that that the matter may be decided on its merits.
11. As per Section 252 (3) of the Companies Act, 2013, if the Tribunal is satisfied that the company was at the time of its name being struck off, carrying on business or in operation or otherwise it is just that the name of the company be restored to the register of companies, order the name of the company to be restored to the register

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

CP No. 26/GB/2023

of companies, and the Tribunal may, by the order, give such other directions and make such provisions as deemed just for placing the company 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.

12. In the present case, the Appellant has not provided any proof that the company was conducting its business or was operational during the relevant time, when the company was struck off from the Register maintained by the Respondent. From the available financials of the Company for the period 2021-22, it is evident that it has no revenue from operations, Income is 'nil' and the Company is incurring loss. It has no employees in its employment. No Bank Account or PAN details have been provided. Further, it has no fixed assets, plant and machinery or any other assets except for some cash in hand. Moreover, the Appellant has failed to convince this bench that why it is reasonable to revive or restore the name of the Company. The Appellant has also not provided any business plan for the coming years, if it is restored. The Tribunal has discretionary power to restore a Company to the register, and it will only exercise it for a substantial reason and not as a mere formality.
13. In view of the forgoing we are not inclined to allow this appeal and in result the instant appeal i.e. **CP No. 26/GB/2023 shall stand dismissed.**
14. The Registry is directed to send e-mail copies of the order forthwith to all the parties inclusive of the Counsel.
15. Urgent certified copy of this order, if applied for be issued upon compliance with all requisite formalities.
16. File be consigned to record.

Sd/-

**Satya Ranjan Prasad
Member (Technical)**

Sd/-

**H.V. Subba Rao
Member (Judicial)**

Signed this on 12th day of April, 2024.