IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.308

Appeal/43(AHM)2023

Order under Section 252(3) of Co. Act, 2013

IN THE MATTER OF:

Department of Income Tax **.....Applicant**
V/s
M B Offshores Distributors Pvt Ltd & Anr **.....Respondent**

Order delivered on: 08/07/2024

Coram:

Mr. Shammi Khan, Hon'ble Member(J)
Mr. Sameer Kakar, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

(Hybrid Mode)

The case is fixed for pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

-Sd-

SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-

SHAMMI KHAN
MEMBER (JUDICIAL)

NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT-I

Co. Appeal No.43/252/NCLT/AHM/2023

[Application under Section 252 of the Companies Act, 2013]

In the matter of:
Department of Income Tax
Through Income Tax Officer,
Ward-2(1)(1), Surat.
Having Office at:
222, Aaykar Bhavan,
Majura Gate, Surat.

.... Appellant

VERSUS

1. **Registrar of Companies, Gujarat**
   Having office at:
   Registrar of Companies,
   ROC Bhawan, Opp. Rupal Park Society,
   Behind Ankur Bus Stop, Naranpura,
   Ahmedabad – 380013, Gujarat.

2. **M/s. M B Offshores Distributors Private Limited,**
   6/1943, Office No.303, Cabi. 3rd Floor,
   Navkar Building, Opp. Kabir Mandir,
   Mahidharpura,
   Surat, Gujarat.

3. **Mr. Ali Akbar Rizvi**
   Director of M/s. M B Offshore Distributors Pvt. Ltd.
   6/1943, Cabin No.1, Office No.303,
   Navkar Building, Mahidharpura.

4. **Mr. Ashok Kumar M. Singh**
   Director of M/s. M B Offshore Distributors Pvt. Ltd.
   6/1943, Cabin No.1, Office No.303,
   Navkar Building, Mahidharpura.

5. **Mr. Sachin Sitaram Salvi**
Director of M/s. M B Offshore Distributors Pvt. Ltd.
6/1943, Cabin No.1, Office No.303,
Navkar Building, Mahidharpura.

6. **Mr. Aniket Asho Ambekar**
Director of M/s. M B Offshore Distributors Pvt. Ltd.
6/1943, Cabin No.1, Office No.303,
Navkar Building, Mahidharpura.

.... Respondents

Order Pronounced on: 08.07.2024

CORAM:

SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)
SH. SAMEER KAKAR, HON'BLE MEMBER (TECHNICAL)

APPEARANCE:

For the Appellant : Ms. Maithili Mehta, Advocate
For the Appellant/RoC : Ms. Rupa Sutar, Dy. RoC

O R D E R
[Per: Bench]

1. The present Company Appeal is filed by the Appellant/ Department of Income Tax, through the Income Tax Officer Ward-1(1)(3), Surat, Having office At: 113, Aaykar Bhavan, Majuragate, Surat under the Provision of Section 252(3) of Companies, Act, 2013 to revive the Respondent No.2 i.e. M/s. M B Offshores Distributors Private Limited which was struck off by the Respondent No.1/RoC on 14.08.2018 due to its failure to file the statutory returns of company for a continuous period of more than two years.

2. The Appellant/Department of Income Tax has sought the following reliefs:

*"(A) That this Hon'ble Tribunal may be pleased to set aside the order dated 14.08.2018 and thereby striking off the name of the **M B OFFSHORES DISTRIBUTORS PRIVATE LIMITED** from the Registrar of Companies; and*

*(B) That this Hon'ble Tribunal may be pleased to order the Registrar of Companies, Ahmedabad to restore the name of the **M B OFFSHORES DISTRIBUTORS PRIVATE LIMITED** to the Registrar of Companies; and*

(C) That this Hon'ble Tribunal may be pleased to set aside the disqualification of the directors."

3. The brief facts of the matter are tabulated below:

4. The Counsel for the appellant states that Respondent No.2 Company was originally incorporated on 30.03.2009 in the name and style of **M/s. M B Offshores Distributors Private Limited** having its registered office at Office 6/1943, Office No.303, CABI, 3rd Floor, Navkar Building, Opp. Kabir Mandir, Mahidharpura, Surat. Having Corporate Identity No. **U51900GJ2009PTC056459** and Registration No: **56459**. The said Company was involved in the business of trading and rough and polished diamonds and the certificate of incorporation was issued by Registrar of Companies (ROC), Ahmedabad, having Mr. Sachin Salvi Sitaram and Mr. Aniket Ambekar Ashok as the Directors

of Company. The Permanent Account Number of the Company is **AAFCM9622E.**

5. The Respondent No. 2 i.e. **M/s. M B Offshores Distributors Private Limited** was struck off by the Respondent No.1/RoC vide order (STK-7) dated 14.08.2018 (Annexure A) due to its failure to file the statutory returns of company for a continuous period of more than two years.

6. The Counsel for the appellant states that the Income Tax Department's reassessment Proceedings with respect to Respondent No.2 is pending for the Assessment Year 2013- 2014, corresponding to Financial year 2012-13. In view of which, the Company is required to be restored to the Register maintained by ROC.

7. The appellant submits that in view of the Instructions issued vide F.No. 225/423/2017/ITA.II dated 29/12/2017 and 18/04/2018 (Annexure B) issued by the Ministry of Finance Department of Revenue, Central Board of Direct Taxes, New Delhi, the Income Tax Department is directed to file an application for restoration of 'struck off' companies under following circumstances:

   i. Where the proceedings were already in progress; or
   ii. Where there is pendency of outstanding tax-arrears.

8. The Appellant states the copy of notice dated 21/07/2022 was issued upon assesse under section 148 of the I.T. Act, 1961 for the Assessment year 2013-14 is annexed to the appeal and marked as Annexure D.

9. The Appellant states that a copy sanction letter dated 18.07.2022 from Commissioner of Income Tax under section 15l of IT act, 1961 for assessment under section 147 for the Assessment Year 2013-14 is annexed to the appeal and marked as Annexure E.

10. The Appellant states that a Communication dated 29.11.2022 which took place between Income Tax Department and the Respondent No.1/Registrar of Companies, wherein the department has requested ROC to take up the issue before Hon'ble NCLT, Ahmedabad is annexed to the appeal and marked as Annexure C.

11. The appellant submits that the appeal for restoration is required to be filed to protect the legitimate interest of Revenue. It may also be emphasized that the concerned Company apparently committed serious violation or provisions of Income Tax Act and restoration of the company in the register of companies would enable the Income Tax Department to take the proceedings to logical conclusion.

12. Despite multiple service of notice to the Private Respondents/Directors none appeared on behalf of the Private Respondents/Directors. Hence, substituted service through paper publication in respect of the Private Respondents/Directors was directed to be made vide order dated 04.01.2024. The necessary paper publication was made on 01.05.2024 by the Appellant in two newspapers out of one in vernacular. However, despite due service through substituted mode of publication, none has appeared on behalf of the Private Respondents/Directors and as a result of which vide order dated 04.07.2024 the Private Respondents/Directors were proceeded **ex-parte**.

13. The Respondent No.1/RoC appeared and filed its reply to the application in which certain objections were raised against the present appeal. The department of The Income tax has filled a rejoinder as against the objection so raised by the Respondent No. 1/RoC.

14. On 04.07.2024, The Deputy Registrar had appeared on behalf of the RoC, Gujarat and has stated that Registrar of Company Gujarat has no objection if the Respondent No. 2 for revival of the company at the instance of the Income Tax Department.

15. We have heard Ld. Proxy advocate Ms. Kinjal Vyas, on behalf of Ms. Maithili Mehta, Advocate on behalf of the Appellant/Income Tax Department and Ms. Rupa Sutar,

Deputy Registrar on behalf of the Respondent No.1/RoC. The Private Respondents are proceeded Ex-Parte.

16. It is noted that the present appeal is filed by Appellant in view of the Instructions issued vide F.No. 225/423/2017/ITA.II dated 29/12/2017 and 18/04/2018 (Annexure-B) issued by the Ministry of Finance Department of Revenue, Central Board of Direct Taxes, New Delhi wherein the Income Tax Department is required to file an application for restoration of 'struck off' companies under following circumstances:
    i. Where the proceedings were already in progress; or
    ii. Where there is pendency of outstanding tax-arrears.

17. It appears that the present Appeal has been filed by the Appellant/Department of Income Tax, U/s 252(3) of Companies, Act, 2013 being creditor of the Company as the Reassessment proceedings pertaining to Assessment Year 2013-2014 corresponding to Financial Year 2012-13 is pending. Further, according to the provisions of section 252(3) the period of limitation for filing the appeal is 20 years hence, the present appeal is within limitation.

18. The Respondent No.2/Company apparently has committed serious violation or provisions of Income Tax Act. In order to protect the legitimate interest of Revenue, it is necessary to restore the company in the register of

companies which would enable the Income Tax Department to take the proceedings to logical conclusion.

19. The present Appeal is filed under Section 252 (3) of the Companies Act which is objected by the ROC stating that the present appeal needs to be filed under Section 252(1) of the Companies Act. Section 252 of the Companies Act 2013 is reproduced as under:

<u>252. Appeal to tribunal</u>

252 (1) Any person aggrieved by an order of the Registrar, notifying a company as dissolved under section 248, may file an appeal to the Tribunal within a period of three years from the date of the order of the Registrar and if the Tribunal is of the opinion that the removal of the name of the company from the register of companies is not justified in view of the absence of any of the grounds on which the order was passed by the Registrar, it may order restoration of the name of the company in the register of companies:

Section 252(3) of the Companies Act 2013 is reproduced as under:

(3) If a company, or any member or creditor or workman thereof feels aggrieved by the company having its name struck off from the register of companies, the Tribunal on an application made by the company, member, creditor or workman before the expiry of twenty years from the publication in the Official Gazette of the notice under sub-

section (5) of section 248 may, if 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 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.

20. The Hon'ble Supreme Court in the judgement of ***Sambhaji & Ors. V/s Gangabai & Ors.*** in ***Civil Appeal No. 6731 of 2008*** stated that all the Rules of procedure are the handmaids of justice. The relevant portion of the order is reproduced as under:

"9. All the rules of procedure are the handmaids of justice. The language employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the statute, the provisions of CPC or any other procedural enactment ought not to be construed in a manner which would leave

the court helpless to meet extraordinary situations in the ends of justice."

10. The mortality of justice at the hands of law troubles a Judge's conscience and points an angry interrogation at the law reformer."

In the view of the above provisions, the objections of the ROC are overruled. The applicant is a creditor of the company and has rightly filed the present application.

21. In light of the above, we are of the opinion that the name of the Respondent No.2 Company is required to be restored to Register of Companies since reassessment proceedings pertaining to Assessment Year 2013-2014 corresponding to Financial Year 2012-13 is pending against the Company. In these circumstances, if name of the Company is not restored it would cause great prejudice to the appellant and loss to the Revenue to the exchequer.

22. In view of the same, we hereby order as under:-
    a. The Respondent No.1/Registrar of Companies, Gujarat, is directed to restore the original status of the Respondent No.2 Company, **M/s. M B Offshores Distributors Private Limited** as if the name of the Respondent No.2 Company has not been struck off from the Register of Companies with resultant and consequential actions like changing status of the

Respondent No.2 Company from 'Struck Off' to Active.

b) The Respondent No.2 Company is directed to file all pending statutory document(s) including Annual Accounts and Annual returns, if any, along with prescribed fees/additional fee/fine as prescribed under the Companies Act, 2013 within 45 days from the date on which its name is restored on the Register of Companies by the RoC, Gujarat (Dadra & Nagar Haveli);

c) The Appellant and Respondent No.2 Company is directed to submit a certified copy of this order to the Respondent No.1/RoC within 30 days of the receipt of this order.

d) On such delivery and after duly complying with the above directions, the Respondent No.1/Registrar of Companies, Gujarat (Dadra & Nagar Haveli) is directed to, on its office name and seal, publish the order in the official Gazette as well as to update the master data with respect to the active status of the Respondent No.2 Company.

e) This order is confined to the violations, which ultimately leads to the impugned action of striking off the name of the Respondent No.2 Company, and it will not come in the way of ROC to take appropriate action(s) in accordance with law, for any

other violations/offences, if any, committed by the Respondent No.2 Company prior or during the striking off of the company.

f) The registry is directed to send the copy of the order to Respondent No.2 Company on its registered address and email.

23. The **Company Appeal No. 43 of 2023** stands allowed and disposed of as per the above terms.

24. A certified copy of this order, if applied for, be issued upon compliance with all requisite formalities.

-Sd-	-Sd-
SAMEER KAKAR	**SHAMMI KHAN**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

AT