

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH COURT-VI**

**Company Appeal No. 117/MB/2023**

*[Under section 252(1) of the Companies Act, 2013]*

**In the matter of**

**DELCAM SOFTWARE (INDIA) PRIVATE LIMITED**

Registered office: 11 F, 36/3-B, Business Plaza

Mundhwa Road, Koregaon Park Annex

Koregaon Park, Pune Maharashtra – 411 001.

**...Appellant / Liquidator**

V/s

**Registrar of Companies, Pune**

PCNTDA Green Building, BLOCK A, 1<sup>st</sup> & 2<sup>nd</sup> Floor

Near Akurdi Railway Station Akurdi

Pune, Maharashtra – 411 044.

**...Respondent/ROC**

**Pronounced: 06.06.2024**

**CORAM:**

**HON'BLE SHRI K. R. SAJI KUMAR, MEMBER (JUDICIAL)**

**HON'BLE SHRI CHARANJEET SINGH GULATI, MEMBER (TECHNICAL)**

**Appearance: Hybrid**

**For the Appellant** : Adv. Omkar V. Deosthale i/b CS Satyjeet Joshi

**ROC/Respondent** : Mr. Mangesh Jadhav RoC, Pune

**ORDER**

***[Per: Shri K. R. SAJI KUMAR, MEMBER (JUDICIAL)]***

1. This Appeal is preferred on 19.04.2023 under Section 252(1) of the Companies Act, 2013 (Act) by Mr. Vasudevan Gopu, Liquidator of **Delcam Software (India) Private Limited** (Appellant Company/Company) against the order of the **Registrar of Companies, Pune (RoC)**, striking off the name of the Company from the Register of Companies (Register), and dissolving the Company.

2. The name of the Appellant Company was struck off from the Register on account of the Company having failed to comply with the statutory obligation of filing its Financial Statements and Annual Returns for more than two years. The RoC initiated proceedings under Section 248 of the Act and finally struck off the Company from the Register of Companies (Register) *vide* Form No. STK-7 dated 14.02.2022, under Section 248(5) of the Act.

3. **CONTENTIONS OF APPELLANT**

3.1 The Appellant Company submits that the Company was incorporated on 31.12.2002. The Company was carrying on the business of design, develop, process service, modifying, buying, selling, importing, exporting, undertaking on contract or otherwise software development training, data processing, medical transcription, CAD drawings/designs, CAD electronic

date, computer programming, running call centres, interactive software, multimedia software, information technology solutions, consultancy in computer aids and operations, etc. The Company entered into a Business Purchase Agreement (BPA) with Autodesk India Private Limited for the transfer of its business on 01.08.2016, and, accordingly, discontinued its business operations. According to the BPA, assets and liabilities of the Appellant Company as specified therein, outstanding as on 01.08.2016, have been transferred to Autodesk India Private Limited. The Appellant Company has no mala fide intention and has no intention to obtain Dormant Status, as the Company is under liquidation and due to inadvertence, the name of the Company has been struck off by the RoC. The Forms MGT 14 and GNL 2 were approved by the RoC. However, even after approval of these Forms, the status of the Company was not changed to "Under Liquidation" and after two years, the RoC has inadvertently struck off the name of the Company from Register. Pursuant to the above, the Appellant Company had initiated its Voluntary Liquidation Process under Section 59 of Insolvency and Bankruptcy Code, 2016 (IBC) *vide* the resolution passed by the members of the Company. The Appellant Mr. Vasudevan Gopu, an Insolvency Professional, was appointed as Liquidator of the Company. The Liquidator submitted that the Company's bank is not in a position to remit the surplus assets

left for distribution among the shareholders due to the struck off status of the Company and, furthermore the Liquidator is unable to proceed with the liquidation process.

3.2 It is also submitted that in the event of revival of the Appellant Company and restoration of the name of the Company in the Register, the Liquidator shall take steps for remitting proceeds from the surplus assets to the bank account for distribution among the shareholders as per their entitlement.

3.3 It is also stated that upon the restoration of the name of the Company in the Register maintained by the RoC, the Liquidator shall proceed with the Voluntary Liquidation Process and will complete the necessary filing of documents to the RoC pursuant to the completion of the process.

3.4 It is also submitted that in the event of restoration of name of the Company in the Register, and its revival, the Appellant Company will comply with all the statutory obligations under the Act.

4. **CONTENTIONS OF RESPONDENT/ROC**

4.1 The Respondent / RoC submitted that although the Company was incorporated on 31.12.2002, it has failed to comply with the statutory compliance of filing of returns for a continuous period

of more than two years, indicating commencement of business period, and hence, the Company was considered for striking off from the Register in a *suo motu* action under Section 10A of the Act as well as in accordance with the Circulars, as applicable, issued by the Ministry of Corporate Affairs (MCA).

4.2 The RoC further stated that STK-1 Notice informing the intention of the RoC to strike off was given to the Company. Further, STK-5 Notice was published on 08.12.2021 and the name of the Company was struck off on 14.02.2022. However, the RoC did not receive any representation from the Appellant Company against the striking off action, and that is the reason, subsequently, it was struck off from the Register and was dissolved on 14.02.2022. The RoC concluded submissions by praying for imposing maximum cost of the total fine for the defaults of various sections of the Act, if this Tribunal is inclined to allow the present Appeal.

## 5. **ANALYSIS AND FINDINGS**

5.1 We have heard the Counsel for the Appellant Company and the RoC, and considered all the documents on record. We find that the Company entered into the BPA with Autodesk India Private Limited for the transfer of its business on 01.08.2016 and accordingly discontinued its business operations. Forms MGT 14 and GNL 2 were approved by the RoC. However, even after

approval of these Forms the status of the Company was not changed to "Under Liquidation". Further, it had not filed made application to the RoC for the status of Dormant Company under Section 455 of the Act.

- 5.2 This Appeal has been filed by the Appellant Company within three years from the date of the order of the RoC striking off its name and dissolving the Company under Section 248 of the Act. We have considered the reasons given by the Appellant due to which the name of the Company has been struck off from the Register. We find that there was no wilful failure on the part of the Appellant Company as such struck off was done on account of it being under Voluntary Liquidation and that it was not carrying on any business or operation.
- 5.3 We feel that the relevant documents which are required to be filed, are ready with the Appellant Company and it is willing to file the same.
- 5.4 Hence, upon considering the facts and circumstances of this present Appeal, we are of the view that it would be just and fair to order restoration of the name of the Appellant Company in the Register maintained by the RoC.
- 5.5 Accordingly, this Appeal is **allowed**. The restoration of the Company's name to the Register is hereby ordered with a direction that the Appellant Company shall comply with all the

provisions of the Act and the Rules made thereunder. Further, this Order shall be subject to payment of cost of **Rs. 5,000/- (Five Thousand Rupees)** -imposed for each year of default until the current financial year, to be paid online through *Bharat Kosh* to the Respondent/ RoC. The RoC is directed to restore the original status of the Company as if the name of the Company had not been struck off from the Register of Companies on payment of the cost.

- 5.6 The RoC shall give effect to this Order after compliance of the costs imposed as above. The Company is directed to file all the required Financial Statements and Annual Returns along with the prescribed fee/fine as decided by the RoC. The Company shall fulfil other relevant statutory compliances within 30 days from restoration of its name in the Register maintained by RoC.
- 5.7 After due compliance of the above directions, RoC is directed to publish the Order in the Official Gazette by his office name and seal.
- 5.8 This Order is confined to the violation 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 RoC taking appropriate action in accordance with law for any other violations/offence committed by the Company, either prior to or during the period the name of the Company remained struck off.

6. The **C.A. No. 117/2023** is allowed and thus disposed of in terms of above directions.
7. The Registry is directed to send copies of the order to all the parties concerned forthwith.

**Sd/-**  
**CHARANJEET SINGH GULATI**  
**MEMBER (TECHNICAL)**

**Sd/-**  
**K. R. SAJI KUMAR**  
**MEMBER (JUDICIAL)**

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