

**NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH,  
COURT- III**

**Company Appeal No.: 106/2023**

Under section 252(3) of the Companies  
Act, 2013

*In the matter of*

**S M HOLDING AND FINANCE  
PRIVATE LIMITED through its  
director, Ms. Geetha Mohandas  
Shetty**

S M House, 7<sup>th</sup> floor, 11, Sahakar  
Road, Vile Parle (East), Mumbai- 400  
057

*...Appellant*

Versus

**THE REGISTRAR OF COMPANIES,  
MUMBAI**

100, Everest, Marine Drive Mumbai-  
400002,

*...Respondent*

**Order pronounced on: 18/04/2024**

***Coram:***

**Hon'ble LAKSHMI GURUNG, MEMBER (JUDICIAL)**

**Hon'ble CHARANJEET SINGH GULATI, MEMBER (TECHNICAL)**

***Appearance:***

For the Appellant: Adv. Shivam Agarwal i/b. Keystone Partners

For the Respondent: RoC Mumbai

***Per: Ms. Lakshmi Gurung, Member (Judicial)***

**ORDER**

1. The instant appeal has been filed under Section 252(3) of the Companies Act, 2013 ('the Act') by **S M HOLDING AND FINANCE PRIVATE LIMITED** ('Appellant/Company') through its Member and director Ms. Geetha Mohandas Shetty praying for restoration of its name in the Register of Companies maintained by the Registrar of Companies, Mumbai ('ROC').

**Brief Facts:**

2. M/s S. M. HOLDING AND FINANCE PRIVATE LIMITED was incorporated on 04.02.1982 with Registrar of Companies, Mumbai under the Companies Act, 1956 bearing CIN No. U67120MH1982PTC026268 having registered office situated at S M House, 7<sup>th</sup> floor, 11, Sahakar Road, Vile Parle (East), Mumbai-400057.
3. It is mentioned that the Authorized Share Capital of the Company is Rs. 6,00,00,000/- consisting of 6,00,000 equity shares of Rs. 100 each and the issued, subscribed and paid up share capital is Rs. 5,61,00,000 /- consisting of 5,61,000 equity shares of Rs. 100 each as per the records in the MCA.
4. The main business activities of the Company:  
*"To carry on the business as an investment company and for that purpose to acquire and hold either in the name of the Company or in that of any nominees shares, stocks, debentures, debenture-stock, bonds, notes and to invest or to deposit or to hold funds of that Company in such articles (including gold,*

*silver, platinum, precious metals and precious stones) and minerals, articles or things, obligations and securities issued or guaranteed by any Government, sovereign ruler, commissioner, public body or authority, supreme, dependent, municipal, local or otherwise in any part of the world either at the Company's office or any places of safe custody.”*

5. However, the Company failed to file Audited Financial Statements and Annual Returns for FY 2015-2016, 2016-2017 and 2017-2018. Therefore, ROC issued notice under Section 248 (1) & (4) of the Companies Act, 2013 in Form No. STK-5 vide Public Notice No. ROC/STK-1/32 dated 19.07.2018 which is available on MCA website. However, it is the case of the Appellant that, the Appellant company did not receive said notice i.e. STK-5 dated 19.07.2018 and therefore could not make representation before ROC.
  
6. As no representation was received from the Appellant Company, the ROC had reasonable cause to believe that the Appellant was not carrying out any business or operations for a period of two immediately preceding financial years and had not made any application during this period for obtaining the status of dormant company under Section 455. Therefore, ROC struck off the name of the Appellant Company from the Register of Companies vide STK-7 No.ROC-MUM/Section248/2<sup>nd</sup>Drive/STK-7/7254 dated **12.09.2018** Both STK-5 and STK-7 are annexed to the appeal and the name of the Appellant Company is mentioned at serial no. 13666 and 8309 respectively.

7. It is submitted that currently, the Company has two directors, Ms. Geetha Mohandas Shetty (DIN: 02000486) and Ms. Vaishali Shetty Oza (DIN: 00228554) who has been managing the affairs of the Appellant since its incorporation and 16.11.2012 respectively. The Appellant Company has maintained all necessary statutory registers and records as prescribed under Companies Act, 1956 and Companies Act, 2013. The Appellant has meticulously ensured compliance with various statutory provisions, and has never defaulted in payment of statutory dues, payment to its creditors and employees.
8. The turnover of the Company for eight financial years commencing from 2014-2015 to 2021-2022 are as under:

<b>Financial Year</b>	<b>Turnover (in Rupees)</b>
2014-2015	3,53,68,558/-
2015-2016	11,00,000/-
2016-2017	68,558/-
2017-2018	NIL
2018-2019	49,000/-
2019-2020	49,000/-
2020-2021	49,000/-
2021-2022	49,000/-

9. The Appellant has been functioning since its incorporation and its members have duly approved its audited financial statements for all the years including for the Financial Years 2015-2016, 2016-2017 and 2017-2018 at the Annual General Meetings for the respective years. However, the Appellant was unable to file its audited financial statements for the above-mentioned financial years because the Applicant did not have adequate secretarial support, and the agencies to whom the outsourcing for compliances was done did not report the non-compliances. The Board become aware of the lapses only when

the name of the Applicant was struck off. Immediately, thereafter, the Board of Directors of the Applicant took the decision to file an application for restoration and the same was originally filed on 27.07.2020 vide filing no. 2709138/02167/2020.

10. However, due to dislocation of the administrative mechanism of the Applicant and the onset of Covid-19, the application could not be processed nor was followed up by the Applicant's Secretarial Representative because of which it ultimately got rejected for non-clearance of defects.
11. The Appellant has also duly filed its Income Tax Return for all the years including for the Financial Years 2015 - 2016, 2016 - 2017 and 2017 - 2018. Moreover, the Applicant has an active Taxpayer Identification Number (TIN) and has been regularly filing for the renewal of the same for the purposes of continuing the operations of a company. A copy of the Appellant's TIN registration status as available on the Department of Goods and Services Tax website. As on 12.09.2018 i.e. the date on which the Appellant's name was struck off from the Register of Companies with effect from 11.09.2018 the Appellant held and continues to hold substantial assets in its name.
12. The Audited Financial Statement for the Financial Year 2017 - 2018 records that the Appellant held Total Assets worth Rs. 10,82,19,861/- Moreover, the Financial Statement for Financial Year 2021 - 2022 records that the Appellant held Total Assets worth Rs.5,41,91,222/-.
13. The Appellant has maintained a bank account bearing account number 00152320003662 with HDFC Bank Ltd., Gokhale Road, Mulund West Branch. It is submitted that the object of Section 252

(3) of the Companies Act, 2013 is to afford a chance to the company or any member/ creditor/ workman who is aggrieved by the order of Registrar of Companies striking off a company's name under Section 248 of the Companies Act, 2013, to file an Appeal before the Tribunal for restoration of name of the company in the Register of Companies maintained by Respondent and to give the aggrieved person an opportunity to carry on the business of the company.

14. Following documents are annexed to the Appeal to show that company has carried on its operations:

- a) Copy of Audited Financial statements for F.Y. 2015-2016, 2016-2017, 2017-2018.
- b) Copy of Income Tax Returns filed with Income Tax Department for AY 2018-2019, 2019-2020 and AY 2020-2021.
- c) Copy of Demat Account Statements from National Securities Depository Limited for following time periods-
  - i. 1<sup>st</sup> August 2015 to 31<sup>st</sup> August 2015,
  - ii. 1<sup>st</sup> September 2016 to 31<sup>st</sup> September 2016,
  - iii. 1<sup>st</sup> March 2019 to 31<sup>st</sup> March 2019,
  - iv. 1<sup>st</sup> March 2021 to 31<sup>st</sup> March 2021,
  - v. 1<sup>st</sup> March 2023 to 31<sup>st</sup> March 2023.

15. It is submitted that in the event of revival of the Appellant and restoration of its name in the Register of Companies maintained by the Respondent, the Appellant undertakes to file all pending statutory documents including the Financial Statements & Annual Returns

along with the filing fees and the additional fee, as applicable on the date of actual filing.

### **ROC Report**

16. We have perused the ROC Reply which states as follows:

*“5. It is submitted that after issuing **STK-1** notice to the Company and its directors informing the intention of the Registrar to strike off the name of the company, a public notice vide **STK-5 dated 11/09/2018** on the web site maintained by the Ministry and published in Official Gazette on 22/09/2018 and in leading English Newspaper (Times of India) and a vernacular language newspaper (Maharashtra Times-Marathi) on 21/07/2018 seeking objections against the proposed striking off of the name of company from the records of Registrar of Companies.*

*6. It is submitted that in absence of any representation against the proposed strike off action, the **Registrar struck off the name of the company on 11/09/2018** and the dissolution order was published on the web site of the Ministry vide **STK 7** on 14/09/2018.*

*7. In view of the above, this Hon'ble Tribunal may reject the Petition as due process has been followed by the Registrar of Companies before striking off the name of the company from the Register of Companies. Further, Disqualification of Directors under section 164(2)(a) read with Section 167(1)(a) of the Companies Act, 2013 cannot be removed in this petition. However, if the Petitioner proves that it is carrying on business and this Hon'ble Tribunal is inclined to allow revival of the Company under section 252 of the Companies Act, 2013, the Hon'ble Tribunal may impose exemplary costs.”*

17. Considering the facts of the case we find no error on the part of ROC in striking off the name of the Company from the register of

companies. Admittedly the Company failed to file Audited Financial Statements and Annual Returns for FY 2015-2016, 2016-2017 and 2017-2018.

18. However, Section 252 (3) of the Companies Act, 2013 confers powers on this Tribunal to order for restoration of the name of the Company in the Register of companies maintained by ROC, on an application made by the (i) Company (ii) Member (iii) creditor or (iv) workman before the expiry of 20 years from the date of publication in Official Gazette of the notice under Section 248 (5) of the Act, 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 just that the name of the company be restored to the register of companies.
19. Considering the documents annexed to the Petition, we are satisfied that the Company was carrying on its business at the time when its name was struck off. We also note the undertaking given by the directors to comply with the directions of this Tribunal and not to commit default of the provisions of Companies Act, 2013 in future. Therefore, this appeal needs a sympathetic consideration. Accordingly, we pass following order:

**ORDER**

- a) We direct the Registrar of Companies, Mumbai to restore the name of the Appellant Company i.e. **S M HOLDING AND FINANCE PRIVATE LIMITED** in the Register of Companies as if the name of the company has not been struck off from the Register of Companies with resultant and consequential actions like changing status of Company from “Strike off” to “Active”.



- b) The restoration of the Company's name is subject to the payment of cost of Rs. 50,000/- (Rs. Twenty-Five Thousand only) to be paid to the Consolidated Fund of India through Bharat Kosh and submission of proof of such payment to ROC within two weeks of this order. Consequently, thereupon the Bank Account(s) shall get defreezed (if frozen).
- c) The appellant company is directed to file a copy of this order with the ROC within 30 days from the date of this order. ROC shall give effect of this Order only after perusal of the Compliance report of cost imposed.
- d) The Appellant Company is directed to file all pending statutory document(s) along with prescribed fees/additional fee/fine as decided by ROC within 30 days from the date on which its name is restored on the Register of Companies by the ROC.
- e) This Order is confined to the violations, which ultimately led to the action of striking of the Company, and it will not come in the way of ROC to take appropriate action(s) in accordance with law for violation/offense, if any, committed by the appellant company prior to or during the striking of the Company. The Appellant Company shall make good the offences, if any arising out of non-compliances of various sections under Companies Act, 2013.
- f) Urgent certified copy of this order, if applied for, be issued upon compliance with all requisite formalities.

20. Company Appeal No. 106/2023 stands allowed and **disposed of** in above terms.

“File to be consigned to Record”

*Sd/-*

**CHARANJEET SINGH GULATI**  
**MEMBER (TECHNICAL)**

(Saayli, LRA)

*Sd/-*

**LAKSHMI GURUNG**  
**MEMBER (JUDICIAL)**