

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

Company Appeal No.156/2023

[Under Section 252(3) of the Companies Act, 2013]

In the matter of

SANJAY KRISHNAKANT VORA

[DIN:03316193]

B-601/701, Krishnaraj

Church Road, Vile Parle West

Mumbai-400056

Maharashtra.

...Appellant

VERSUS

Registrar of Companies, Mumbai

100, Everest, Marine Drive

Mumbai-400002

Maharashtra.

... Respondent

Pronounced: 17.04.2024

Coram :

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

HON'BLE SANJIV DUTT, MEMBER (TECHNICAL)

Appearances (Hybrid):

For the Appellant : Adv. Tejas Sudhakar Tungare

For the ROC/ Respondent : Registrar of Companies
represented by Shri Shivaraj C. Ranjeri, Asstt. Registrar

ORDER

[PER: SHRI SANJIV DUTT, MEMBER (TECHNICAL)]

BACKGROUND

1. The present Appeal has been filed under Section 252(3) of the Companies Act, 2013 (hereinafter referred to as “the Act”) by Mr. Sanjay Krishnakant Vora, who is a member and Director of **SHIVAM PHARMACEUTICALS (INDIA) PRIVATE LIMITED** (hereinafter referred to as “the Company”) praying for restoration of its name in the Register of Companies maintained by the Registrar of Companies, Mumbai (hereinafter referred to as “the RoC”).
2. The name of the Company having CIN No. **U24230MH1988PTC047915** was struck off from the Register of Companies because it had failed to comply with the statutory obligations under the Act. It had failed to file its statutory returns for a continuous period of more than two years. It was noted by the RoC that the Company was not carrying on any business operation for a period of last two financial years and had not made any application within such period for obtaining the status of a Dormant Company under Section 455 of the Act.

3. After issuing STK-1 notice to the Company and its directors informing the intention of the RoC to strike off the name of the Company, a public notice *vide* STK-5 dated 18.05.2017 was published on the website maintained by the Ministry of Corporate Affairs and in the Official Gazette on 12.08.2017. In the absence of any representation against the proposed strike off action, the RoC struck off the name of the Company on 26.07.2017 and the Dissolution Order was published on the website of the Ministry *vide* STK-7 on 28.07.2017. Aggrieved by the aforesaid striking off action, the appellant has preferred the present appeal.

4 **AVERMENTS OF THE APPELLANT**

4.1 The Appellant submits that the Company was incorporated on 01.07.1988 under the Act. It is also submitted that the statutory returns were not filed with the RoC from 31.03.2011 till 31.03.2022. The Company was incorporated with the object to carry on the business of manufacturing and dealing in basic drugs, fine chemicals, pharmaceuticals chemicals and pharmaceuticals of all kinds. The Company was allotted a Plot of Land on lease admeasuring 2142 sq.mtrs. and bearing Plot No.13/4 at Taloja Industrial Area, Taloja by Maharashtra Industrial Development Corporation (MIDC) *vide* order dated 18.07.1988. The Company

constructed a factory building on the same in order to carry out its business activities.

4.2 Post-liberalisation of the economy since 1991, the Company started facing operational and financial challenges coupled with stiff competition from its peers. Therefore, the Directors of the Company decided to diversify the activities of the Company and started offering technical, managerial and consultancy services to various chemical companies to set up their plants in the MIDC. Simultaneously, the Company started providing its factory building on rent to various companies for their business activities.

4.3 It is further submitted that the Company is active and running. It had earned revenue of Rs.11,14,500/- during the financial year ended on 31.03.2016 and Rs.2,45,210/- for the financial year ended on 31.03.2017. The Audited Financial Statements for the financial years ended on 31.03.2016 and 31.03.2017 are annexed to the Appeal. The Company has also maintained Bank Account with the Saraswat Bank, Vile Parle West Branch, Mumbai, copy of which has been placed on record. It is submitted that the Company is a running entity and has been carrying on business and has assets as well as corresponding liabilities.

4.4 Further, the appellant submits that the failure in filing the financial statements was due to inadvertence and was not intentional. It is

submitted that the Company is taking all the necessary steps for its revival.

- 4.5 It is further submitted that in the event of revival of the Company and restoration of name of the Company in the Register maintained by the RoC, the Company shall file its pending financial statements along with the filing fees and the additional fee as applicable on the date of actual filing.
- 4.6 It is submitted that this Tribunal, if satisfied that “otherwise it is just” may order restoration of the name of the Company in the Register of the RoC as per provisions of Section 252(3) of the Act.
- 4.7 It is clarified that the Company has not deposited any amount of cash in Bank Account during the period of demonetisation from 08.11.2016 to 30.12.2016.
- 4.8 It is submitted that provisions of Section 252(3) are to be construed liberally and rejecting or refusing such restoration would be an exception. Unless the present Appeal is allowed, the appellant as well as shareholders of the Company shall suffer irreparable loss and hardship. It is, therefore, prayed that the RoC may be 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.

5 CONTENTIONS OF THE RESPONDENT/ROC:

- 5.1 The Respondent/ RoC has submitted a detailed report/ Affidavit in reply on 11.12.2023, explaining the sequence of events leading to the striking off of the name of the Company from the Register of Companies maintained by it. The Respondent issued STK-1 notice to the Company on the ground that it had failed to file statutory returns for continuous period of more than two years. It is submitted that after issuing STK-1 notice, a public notice *vide* STK-5 dated 18.05.2017 was published on the website of the Ministry of Corporate Affairs and in the Official Gazette on 12.08.2017. It was also published in a leading English Newspaper and a vernacular language newspaper seeking objections against the proposed striking off of the name of Company from the records of RoC.
- 5.2 The Respondent further submits that in the absence of any representation against the proposed strike off action, the RoC struck off the name of the Company on 26.07.2017 and the dissolution order was published on the website of the Ministry of Corporate Affairs *vide* STK-7 on 28.07.2017.
- 5.3 It is also submitted that due process has been followed by the RoC before striking off the name of the Company. Further, Disqualification of Director under Section 164(2)(a) of the Act cannot be removed in this petition. However, it is prayed that if the appellant proves that it

was carrying on business, the Hon'ble Tribunal may impose exemplary costs for revival of the Company under Section 252(3) of the Act.

6. **ANALYSIS AND FINDINGS**

6.1 Upon hearing the submissions of the appellant and perusing the Report of RoC, Mumbai along with the other documents and materials available on record, we find that it is an admitted fact that the Company had failed to file financial statements with the RoC for as many as 12 years from 31.03.2011 to 31.03.2022. We are unable to accept the plea that such failure to file financial statements was due to inadvertence, because the Company was incorporated on 01.07.1988 and it must have been making statutory compliances and furnishing annual financial statements with the RoC in the past over 20 years. To contend that such a Company could not file its financial statements for the next 12 years due to negligence or oversight will be an absurd and untenable proposition. Though the appellant claims that the Company is ready to file its pending financial statements with the RoC, it is noticed from the record that the appellant has not furnished along with the present Appeal audited financial statements of the Company for 9 out of 12 financial years from 2010-11 to 2014-15 and 2017-18 to 2020-21.

6.2 The appellant has not been able to demonstrate with credible evidence that the Company was carrying on business or was in operation at the time of its name being struck off. The Appellant has enclosed the Audited Financial Statements for the financial years 2015-16, 2016-17 and 2021-22 to show that the Company has been in continuous operation. However, a perusal of Bank Account statement of the Company reveals that there were no deposits or credits therein during financial years 2017-18 and 2018-19. This indicates that there was a suspension of business operations, howsoever temporary, during this period when the name of the Company was struck off. However, it is noted that the appellant has not made any specific averments on this aspect.

6.3 The appellant has also taken the plea that as per provisions of Section 252(3), the Tribunal may order restoration of name of the company on the Register of Companies if it is satisfied that it would otherwise be “just” to do so. The expression “just” occurring in Section 252(3) has been interpreted to mean that it is fair and prudent from a commercial point of view to restore the company. It has been held that the Court has to examine the concept of ‘justness’ not exclusively from the perspective of a creditor or a shareholder or a debtor, but from the perspective of the society as a whole [***Siddhant Garg Vs. RoC (2012) 171 Com Cases 326 (Del)***]. Examining the

facts of the present appeal, we find that the Company was not in operation when its name was struck off in 2017. However, in the last few years, the Company has been able to sub-lease the factory building on rent and also earn revenue from its consultancy business. The Company owns valuable assets like industrial plot and factory building. Hence, upon considering the overall facts and circumstances of this present Appeal, this Bench is of the considered view that it would be just and fair to order restoration of the name of the Company in the Register of Companies maintained by the RoC subject to payment of costs.

6.4 Accordingly, the order passed by the respondent/RoC in striking off the name of the Company from the Register of Companies is set aside and this Appeal is allowed subject to the following directions :-

(a) The RoC, Maharashtra, Mumbai is directed to restore the name of the Company to the Register of Companies maintained by it as if the name of the Company had not been struck off from the Register of Companies. Consequently, the Company and all other persons including creditors shall be placed 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.

- (b) The Company shall within a period of 30 days from the restoration of its name in the Register of Companies maintained by the RoC file, *inter alia*, its annual returns and audited financial statements as well other compliances statutorily required to be made under the Act for the period from which there has been default with the requisite charges/fees as well as additional fee/late fees/penalties in accordance with the extant provisions of law and the relevant rules.
- (c) Till all compliances are made by the Company, it shall not alienate or dispose of any of its valuable assets.
- (d) The restoration of name of the Company is also subject to payment of costs of Rs.6,00,000/- (Six Lakhs Rupees) through online payment in www.mca.gov.in under the head miscellaneous fees by mentioning the particulars as “payment of cost for revival of company”, as the failure to file the financial statements for 12 years was not inadvertent but conscious and deliberate.

- (e) In case the Directors have been disqualified under Section 164(2)(a) of the Act by the Respondent/RoC, this order shall not automatically entitle the Directors of the Company to be restored to directorship except in accordance with law.
- (f) Further, this order allowing the Appeal shall also not circumscribe the power of the Respondent/RoC to proceed against the Company and its Directors as mandated for alleged late filing of any forms, documents, returns and such other compliances under the provisions of the Act.
- (g) An Affidavit of compliance of the aforesaid directions shall be filed by the appellant within a period of two months from the date of this order. The RoC shall give effect of this Order only after perusal of the Compliance report of aforesaid directions including costs imposed.
7. The Appeal thus stands **allowed** on the aforementioned terms.

Sd/-

SANJIV DUTT
MEMBER (TECHNICAL)

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Sd/-

K.R. SAJI KUMAR
MEMBER (JUDICIAL)