

NATIONAL COMPANY LAW TRIBUNAL, MUMBAI
BENCH, COURT- III

Company Appeal No.: 152/2023

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

In the matter of

**OM PHARMACHEM PRIVATE
LIMITED THROUGH ITS
MEMBER CUM DIRECTOR MR.
VIJENDRA JADHAV**

K-119, Ansa J & K Industrial Estate,
Sakivihar Road, Sakinaka, Andheri
East Mumbai, Mumbai City- 400072

.....Appellant

Versus

**THE REGISTRAR OF COMPANIES,
MUMBAI**

100, Everest, Marine Drive Mumbai-
400002,

.....Respondent

Order pronounced on: 12/04/2024

Coram:

Hon'ble LAKSHMI GURUNG, MEMBER (JUDICIAL)

Hon'ble CHARANJEET SINGH GULATI, MEMBER (TECHNICAL)

Appearance:

For the Appellant: PCS Suraj Sharma

For the Respondent: None present

Per- Corum: Ms. LAKSHMI GURUNG, (Judicial)

1. The instant appeal has been filed under Section 252(3) of the Companies Act, 2013 (for brevity **“the Act”**) by **OM PHARMACHEM PRIVATE LIMITED** (for brevity **“Appellant/Company”**) through its Member and director Mr. Vijendra Jadhav praying for restoration of its name in the Register of Companies maintained by the Registrar of Companies, Mumbai (hereinafter as ROC). Mr. Vijendra Jadhav is also holding power of attorney of Mrs. Vanashree Vijendra Jadhav and they both are holding the entire shares of the Company.
2. M/s OM PHARMACHEM PRIVATE LIMITED was incorporated on **19.01.2021** with Registrar of Companies, Mumbai under the Companies Act, 2013 bearing CIN No. U24299MH2021PTC353745 having registered office situated at K-119, Ansa J & K Industrial Estate, Sakivihar Road, Sakinaka, Andheri East Mumbai, Mumbai City- 400072.
3. It is mentioned that the authorized and paid up Share Capital of the Company is Rs. 1,00,000/- consisting of 10,000 equity shares of Rs. 10/- each. It is submitted that after incorporation of the Company the subscribers to the Memorandum of Association (MOA), deposited their subscription money into the Bank Account of the Company on 09.04.2021 as per details given below. Copy of Bank Statement is annexed to the appeal.

S.N	Name	Subscription Amount (Rs.)	Date of transfer
1.	Vijendra Jadhav	60,000	09.04.2021
2.	Vanashree Vijendra Jadhav	40,000	09.04.2021
		1,00,000	

4. Upon receipt of the subscription money, the Company has allotted equity shares 6,000 shares to Mr. Vijendra Jadhav and 4,000 shares to Mrs. Vanashree Vijendra Jadhav.
5. The main business activities of the Company are *“to carry on the business of trading and manufacturing of pharmaceutical goods”*. Accordingly, the Company has started its operations.
6. However, Company failed to file INC-20A within 180 days from the date of Incorporation as required under section 10A of the Companies Act 2013. Therefore, ROC initiated action under sub-section 3 of section 10A for removal of the name of the Company from the register of companies and struck off the name of the Company vide Notice No. ROC/MUM/248(5)/STK-7/DriveN/ 2022 dated **07.12.2022**. STK-7 is annexed to the appeal and the name of the Appellant Company is mentioned at serial no. 3270.

7. Ld. PCS for the Appellant Company submits that the Company is continuously carrying on its business which is supported by the following documents:
- a) Copy of the GST Registration Certificate of the Company.
 - b) Copy of the Sales Register evidencing the sales of the Company.
 - c) Copy of Bank Statement from 01.04.2021 to 31.08.2023.
 - d) Copy of Audited Financial statements for F.Y. 2021-22.
 - e) Copy of ITRs filed with Income Tax Department for AY 2021-22 and AY 2022-23.
8. He further submits due to lack of proper professional guidance, oversight and inadvertent reasons, the Company could not file the e-form INC-20A within 180 days from the date of incorporation of the Company in respect of the Declaration of Commencement of business with the Registrar of Companies Mumbai as required under Section 10A the Companies Act, 2013.
9. It is further submitted that the Company or its directors never received any notice from ROC, hence they did not have knowledge of the Public Notice bearing No. ROC/Mumbai/STK-5/DriveIV/2022-23/118 under section 248(1) of the Companies Act, 2013 in STK-5 dated 13.09.2022 and hence could not make any representation before ROC within the stipulated period of 30 days which ultimately led to the striking off of the Company's name from the register of companies.

10. It was submitted that restoration of the Company's name to the register of companies would *inter alia* benefit the Central Government and State Government by way of income tax payment, GST payment and other applicable taxes.
11. The directors of the Company in the affidavit have stated that they undertake to file the Declaration in Form INC-20A and comply the directions of this Tribunal and be cautious and diligent in future with respect to filing of documents and forms with the ROC and shall not default in the statutory provisions of the Act.

ROC Report

12. 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 directions informing the intention of the Registrar to strike off the name of the company, a public notice vide **STK-5 dated 13/09/2022** and the name of the company strike off on 07/12/2022 was published on the web site maintained by the Ministry and published in **Official Gazette on 17/12/2022** and in leading English Newspaper (Times of India) and a vernacular language newspaper (Maharashtra Times –Marathi) seeking objections against the proposed striking off of the name 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 07/12/2022 and the dissolution order was published on the web site of the Ministry vide STK 7 on 17/12/2022.

7. *In view of the above, this Hon'ble Tribunal may reject the petition as due process has been followed from the Register of Companies. Further, Disqualification of Directors under Section 164(2)(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."*

13. The ROC, in absence of any representation against the proposed strike off action, struck off the name of the Company and the dissolution order was published on the Website of the MCA vide STK-7 dated 17.12.2022.
14. 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 comply with the provisions of sub-section (1) of section 10A and did not file declaration under clause (a) of section 10A(1) in prescribed e-form 20A within a period of 180 days of the date of incorporation of the Company.
15. 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.

16. We have perused the material placed on record i.e. Copies of (i) Sales Register (ii) the Bank Statement for the period from 01.04.2021 to 31.08.2023 (iii) Copy of Audited Financial statements for F.Y. 2021-22 (iv) Copy of ITRs filed with Income Tax Department for AY 2021-22 and AY 2022-23. Considering the above documents, 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 **OM PHARMACHEM 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. 25,000 /- (Rs. Twenty-Five Thousand only) to be paid to 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 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) including INC-20A 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.

17. Company Appeal No. 152/2023 stands **allowed** and **disposed of** in above terms.

“File to be consigned to Record”

Sd/-
CHARANJEET SINGH GULATI
MEMBER (TECHNICAL)

Sd/-
LAKSHMI GURUNG
MEMBER (JUDICIAL)

NSW, Steno