

**NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT – II
CHENNAI**

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL, CHENNAI BENCH, HELD ON 03-04-2024 AT 10.30 A.M. THROUGH VIDEO CONFERENCING:

**PRESENT : SHRI. JYOTI KUMAR TRIPATHI, HON'BLE MEMBER (JUDICIAL)
SHRI. RAVICHANDRAN RAMASAMY, HON'BLE MEMBER (TECHNICAL)**

APPLICATION NUMBER : --

PETITION NUMBER : CA/22/2023

NAME OF THE PETITIONER : Coffee Times Express Pvt Ltd

NAME OF THE RESPONDENT(S) : The Roc, Chennai

UNDER SECTION : Sec 252(3) of CA, 2013

ORDER

Ld.PCS, Mr.Krishna Mohan appears for the Applicant. Ld. Counsel, Mr.Avinash Krishnan Ravi appears for the Respondent.

This Appeal has been jointly filed by **MR. SEKAR VIJAYA BASKAR AND MR. SEKAR VIJAYA BASKAR** in the capacity of the shareholders of the Subject Company namely, **M/S. COFFEE TIMES EXPRESS COMPANY PRIVATE LIMITED**, under Section 252(3) of the Companies Act, 2013 for restoration of the name of the Company in the Register maintained by the Respondent / RoC aggrieved against the order of Strike Off carried out by the Registrar of Companies, Chennai under Section 248 of the Companies Act, 2013.

2. The brief facts of the matter are tabulated below: -

S. NO.	PARTICULARS	FACT
a)	Name of Company	M/s. Coffee Times Express Private Limited
b)	CIN No.	U15400TN2021PTC142290
c)	Date of Incorporation	26.03.2021

(Contd...2)

d)	Registered Office Address	Door No.4/6, Ground Floor, 3 rd Street, BalaVigneshwara Nagar, Madipakkam, Chennai, Tamil Nadu – 600 091.
e)	STK-5 Date	27.09.2022
f)	STK-7 Date (Publication Date)	26.10.2022 (29.10.2022)
g)	Reasons for Strike Off	The Subscribers to the Memorandum of the company failed to pay their Subscription amount for the value of shares they agreed, which they undertook to pay at the time of incorporation of the company and a declaration to that effect was not filed by the director within the period of 180 days from the date of incorporation of the company as required under Section 10A(1) of the Companies Act, 2013

3. It is stated that the main object of the Company is to carry on the business of manufacture, process, prepare, preserve, can, refine, bottle, buy, sell and deal whether as wholesalers or retailers or as exports or imports or as principals or agents in foods, meats, egg, poultry, vegetables, canned and tinned and processed foods, deep frozen foods including sea foods, deep frozen vegetables, deep frozen cooked and semi cooked varieties of food, preserved fruits, protein, health and nutrient foods of all kinds including baby and deistic foods, cereals, beverages, cordials, tonics restoratives and aerated mineral waters and food stuffs etc., The detailed objects are set out in the Memorandum of Association filed along with the company appeal.

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..3..

4. It is stated that, the company is carrying its business, for which it was incorporated. The company has opened a bank account with the name and style of 'Coffee Times Express Private Limited' in the month of April 2021 and deposited the Subscription money. Further the appellants relied heavily on professionals for statutory compliances. Due to lack of knowledge and expertise in respect of Companies Act and other statutes resulted in non-compliance of filing statutory requirements which lead to Striking off of the subject company.

5. Upon notice, the Respondent/RoC filed the Report on 22.11.2023, wherein it is stated as follows,

14. Since the Company is Struck off, the board of directors cease to exist, hence the petitioner company cannot file this present application and the company cannot be represent in the capacity of a shareholder cum director. Hence, the petitioners may be directed to change the cause title.

15. Hence, it is respectfully prayed before this Hon'ble Tribunal may consider this petition based on the merits.

Respondent / RoC concerned has no other substantive objections in the present matter. Pursuantly, the appellants has filed a compliance memo to the RoC objections dated 02.04.2024 and submitted that the cause title of the appeal has been rectified.

6. It is submitted that the non-compliance in respect of filing of statutory requirements as per the Companies Act, 2013 was neither wanton nor wilful. Appellant further undertakes to file statutory requirements including declaration from directors as per law within prescribed time in accordance to the directions.

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7. We have heard the submissions of the Appellant and the Respondent/RoC as well. This Tribunal has made its observations.

8. To substantiate the plea of revival, the Appellant has placed the Bank Account statement of the Subject Company maintained with ICICI bank, Madipakkam, dated 30.04.2021 on records. A Sum of Rs.1,01,001.00/- (Rupees one lakh one thousand and one only) as on 19.04.2021 has been received into the accounts of the subject company. The extract is as below,

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Annexure 4.



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Your Details With Us:
M/S.COFFEE TIMES EXPRESS PRIVATE LIMITED
NO P-6A F-A1,1ST MAIN ROAD,KANNAN NAGAR,
MADIPAKKAM CHENNAI
CHENGALPATTU
TAMIL NADU - INDIA - 600091



Your Base Branch: ICICI BANK LTD. NO 33/4, MEDAVAKKAM ROAD, MADIPAKKAM,CHENNAI 600091

Summary of Account as on 30-04-2021

I. Operative Account in INR

Type of Account	Account Number	Balance (INR)	MICR	IFSC	Nomination
Current	103905003577	1,42,640.00 Cr	600229040	ICIC0001039	Not Registered
TOTAL		1,42,640.00 Cr			

Statement of transactions in Current account number: 103905003577 in INR For the period 01-04-2021 To 30-04-2021

Date	Particulars	Chq.No.	Withdrawals	Deposits	Autosweep	Reverse Sweep	Balance(INR)
01-04-2021	B/F						0.00
19-04-2021	UPI/110914112192/Testrandreamguy@okaxi/ICICI Bank		0.00	1.00			1.00 Cr
19-04-2021	UPI/110914781270/vjayabaskar/vjayabask@okaxi/Axis		0.00	1,000.00			1,001.00 Cr
19-04-2021	UPI/110914849925/vjayabaskar/vjayabask@okaxi/Axis		0.00	25,000.00			26,001.00 Cr
19-04-2021	UPI/110914864807/vjayabaskar/vjayabask@okaxi/Axis		0.00	25,000.00			51,001.00 Cr
19-04-2021	UPI/110914873779/vjayabaskar/vjayabask@okaxi/Axis		0.00	25,000.00			76,001.00 Cr
19-04-2021	MMT/IMPS/110915127263/VJAYABASK/Axis Bank		0.00	20,000.00			96,001.00 Cr
19-04-2021	UPI/110915303446/vjayabaskar/vjayabask@okaxi/Axis		0.00	5,000.00			1,01,001.00 Cr
19-04-2021	MMT/IMPS/110918720411/4343522 by VJAYABASKAR/VIA/VIA/Axis		1.00	0.00			1,01,000.00 Cr
19-04-2021	MMT/IMPS/110918725363/4343554 by VJAYABASKAR/VIA/VIA/Axis		10,000.00	0.00			91,000.00 Cr
20-04-2021	UPI/11017728442/vjayabaskar/vjayabask@okaxi/Axis		0.00	20,000.00			1,11,000.00 Cr
20-04-2021	MMT/IMPS/111017497387/BULDB219049/VJAYABASK/UTIB0		10,000.00	0.00			1,01,000.00 Cr
27-04-2021	One time setup Chq Bx/Pay360		2,000.00	0.00			99,000.00 Cr
27-04-2021	SGST202104272657766290		180.00	0.00			98,820.00 Cr

10. The present Appeal is for restoration of the name of the subject company in the register maintained by the Respondent/RoC concerned. The subscribers to the memorandum of association has also paid their subscription amounts. But the director has failed to file the declaration and INC-20to that effect.

11. Section 252 (3) of the Companies Act, 2013 provides as follows: -

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"Section 252: Appeal to Tribunal,

(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 subsection (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."

The above provisions, vests this Tribunal, with a discretion to restore the subject Company whose name has been Struck Off, in case the Company is able to demonstrate that there is an active business or operation or otherwise as on the date of its Struck Off and it is just to do so.

12. In *Purushottamdass and another (Bulakidas Mohta Company Private Limited V. Registrar of Companies, Maharashtra & Others.)*, Hon'ble *Bombay High Court* the observed as follows:

20. *"The objects of Section 560(6) of the Companies Act, is to give a chance to the company, its members and creditors to revive the company which has been struck off by the Registrar of Companies,*

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within a period of 20 years, and to give them an opportunity of carrying on the business only after the company judge is satisfied that such restoration is necessary in the interests of justice.”

13. In M.A. Rahim & another V. Sayri Bai, reported in MANU/TN/O218/1973, the Division Bench of Hon'ble Madras High Court, held that the word 'just' connotes reasonableness and something confirming to 'Rectitude' and 'Justice', something 'Equitable and Fair'.

14. In this case, the Appellant, who is a shareholder of the Struck Off Company, has submitted the Bank Account of the Subject Company which shows the Subscribed amount has been paid up. It is stated that the Company is ready and willing to comply with the directions and rectify the non-compliance so as to retain its active status in order to carry out the business for which it has been incorporated. We are of the opinion that this appellant Company needs to be given an opportunity to carry out its business. In the Interest of Equity, Fairness and Justice, the Company needs to be restored for carrying out its business and other purposes for which it has been incorporated.

15. In the view of above said facts and circumstances, this tribunal considers the records placed are in line with the Provisions and judgements discussed above. It is therefore ordered as under;

(i) The Registrar of Companies, concerned is directed to restore the original status of the Company i.e. **M/S. COFFEE TIMES EXPRESS COMPANY PRIVATE LIMITED** as if the name of the Company has not been Struck Off from the Register of the Companies with resultant and consequential actions like changing the status of the Company from “**Strike Off**” to “**Active**”.

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(ii) The Company shall within a period of 30 days from the restoration of the name of the company in the register being maintained by the RoC, the appellant shall file *inter alia* all its compliances statutorily required to be made under the Companies Act, 2013 for the period from which there has been default with requisite charges/fees as well as additional fee/late charges.

(iii) That the Restoration of the name of the company is also subject to the payment of the cost of **Rs.25,000.00/- (Rupees twenty five thousand only)** through online payment in www.mca.gov.in under miscellaneous fees by mentioning the particulars as “payment of cost for the revival of Company”, as volunteered by the Appellant during the hearing.

(iv) Until all the compliances are made by the Company, the Company shall not alienate or dispose of any of its valuable assets.

(v) It is made clear that by virtue of this order of restoration of the name of the Company in the register, it will not entitle the Directors of the Company whose names in the case have been disqualified by virtue of provisions of Section 164 of the Companies Act, 2013 by the Respondent/RoC automatically to be restored to directorship except in accordance with the law.

(vi) An affidavit of compliance of the aforesaid directions shall be filed by the Appellant within a period of 2 months from the date of this order.

(vii) The shareholders of the Company shall jointly submit an Undertaking to the Registrar of Companies stating therein that the

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accounts of the Company were not used as means to transact tainted money during the period of demonetization.

(viii) Further, this order allowing the Appeal shall also not circumscribe the power of the respondent to proceed against the Company and its Directors as mandated for alleged late filing of any forms, documents, returns and such other compliance under the provisions of Companies Act, 2013.

16. This **Comp Appeal /22 CHE)/2023** stands *allowed* on the aforementioned terms and *disposed off*.

-SD-

RAVICHANDRAN RAMASAMY
Member (Technical)
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JYOTI KUMAR TRIPATHI
Member (Judicial)