

**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 17-04-2024 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(CA)/26/2023

NAME OF THE PETITIONER : Income Tax Officer

NAME OF THE RESPONDENT(S) : Focus Guarding Solutions Pvt Ltd & Anr

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

ORDER

Ld. Counsel Mr.Raj Kumar Jhabhak appears for the Appellant. Ld. Counsel Ms.Nandhini Agarwal appears for ROC.

This Appeal has been filed by **MR. BALAJI J, INCOME TAX OFFICER**, Corporate Ward – 2(2), Chennai, under Section 252(3)of the Companies Act, 2013, read with Rule 11 &87A of the NCLT (Amendment) Rules, 2017 being aggrieved against the order of Strike Off carried out by the Registrar of Companies, Chennai / Respondent No. 2 (hereinafter R2)under Section 248 of the Companies Act, 2013 for seeking restoration of the name of the Assessee Company / Respondent No. 1 (hereinafter R1) in the Register maintained by the R2/ RoC, Chennai.

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

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S. No.	PARTICULARS	FACT
a)	Name of Company	M/s. Focus Guarding Solutions Private Limited
b)	CIN No.	U93000TN2012PTC088554
c)	Date of Incorporation	19.11.2012
d)	Registered Office Address	Old No. 482, New No.939, Poonamalle High Road, Arumbakkam, Chennai, Tamil Nadu – 600 106.
e)	STK-7 Date (Publication Date)	09.08.2018 (18.08.2018)
f)	Reasons for Strike Off	The Company hasn't been carrying on any business or operation for a period of two immediately preceding financial years and have not made any application within such period for obtaining the status of Dormant Company under section 455 of the Companies Act, 2013.

3. It is submitted that the Appellant has passed assessment orders towards escapement of Income Tax and further has pending assessment penalty proceedings under Income Tax Act, 1961 against the R1 Company.

4. It is submitted that Notices U/s 154 & 274 r/w 271 AAC(1) of the Income Tax Act, 1961 have been issued to the R1 Company. In order to complete the proceedings initiated and recover the tax dues in respect of AY 2018 – 2019, the company need to be revived from the Status of Struck off.

5. The Notice and Demand analysis and Recoverability status report under Sec 274 r/w 271 AAC(1) & 154 of IT act, 1961 issued against the R1 company has been extracted as below,

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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
OFFICE OF THE INCOME TAX OFFICER
CORP. WARD 2(2) CHENNAI/

To, FOCUS GUARDING SOLUTIONS PRIVATE LIMITED Old No.482, New No.939, Poonamallee High Road Arumbakkam Chennai 600106, Tamil Nadu India

PAN: AACCF0842L	Assessment Year: 2018-19	DIN & Notice No.: ITBA/PNL/S/272A(1)(d)/2022-23/1051479244(1)	Date: 28/03/2023
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Notice under section 274 read with section 272A(1)(d) of the Income Tax Act, 1961

Sir/ Madam,

Whereas in the course of proceedings before me for the Assessment Year 2018-19, it appears to me that you failed to comply with notice(s) issued under section 142(1)/ 143(2)/ direction issued under section 142(2A).

You are hereby requested to appear before me either personally or through a duly authorised representative at 12:00 PM on 12/04/2023 and show cause why an order imposing a penalty on you should not be made under section 272A(1)(d) of the Income Tax Act, 1961.

If you do not wish to avail yourself of this opportunity of being heard in person or through authorised representative, you may show cause in writing on or before the said date which will be considered before any such order is made under section 272A(1)(d) of the Income Tax Act, 1961.

Additional Remarks: --

JAYARAMAN BALAJI
CORP. WARD 2(2) CHENNAI/



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
OFFICE OF THE INCOME TAX OFFICER
CORP. WARD 2(2) CHENNAI/

Demand Analysis and Recoverability status report

PAN: AACCF0842L	Name: FOCUS GUARDING SOLUTIONS PRIVATE LIMITED	Date of Report: 27/09/2023
Address: CHENNAI-WANAPARTHY BLOCK, CHENNAI, TAMIL NADU		

Summary of Demand

S. No.	AY	DIN	Demand Section	Date of Order	Demand Outstanding (In Rs.)	Amount Difficult to Recover (In Rs.)	Amount Collectible (In Rs.)
1	2018-19	2023201837002102933C	154	16/08/2023	7,40,35,560		7,40,35,560

Analysis of Demand

6. It is averred that not restoring the struck off company will result in serious losses to the exchequer and enable the defaulting company to go scot-free and no amount would therefore be recovered by means of any legal recourse.

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7. Upon notice, the R2 / RoC, Chennai filed the Report on 06.03.2024, wherein the crux is extracted as below,

13.The present appeal is filed by Shri. J. Balaji, in the capacity of Income Tax Officer, Corporate Ward- 2(2), Chennai. The Applicant is an Officer of Ministry of Finance, Government of India entrusted with the duties of collecting revenue for the Government. The present application is filed by a Statutory Authority to protect the interest of revenue to the Government. As per the Applicant, the company has committed serious violations of provisions of Income Tax Act, 1961 and the company is liable to pay taxes of an amount which can be determined only after the revival of the company.

14.In view of the foregoing circumstances, it is respectfully submitted that before grant of prayer of the petitioner by this Hon'ble Tribunal:

- A. The application may be allowed on its merits.
- B. The petitioner may kindly be directed to submit a report to the respondent furnishing the details of tax assessed and recovered from the company after the revival of the subject company.
- C. To pass such other orders as deemed fit and proper in the circumstances of the case.

The RoC in its report has not raised any substantive objections.

8. Copy of the application and notice of hearing was sent to R1, which returned "No such person in the address".

We have heard the submissions of the Appellant and the R2 / RoC, Chennai.

9. The Appellant has placed the Notices and Demand analysis issued under Income Tax Act, 1961 dated 28.03.2023&27.09.2023 respectively.It is seen that, this appeal is filed by a statutory authority to protect the interest of revenue to the Government. As per the Appellant, the R1 Company is liable

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to pay taxes which can only be recovered only after the revival of the Company.

10. Section 252 of the Companies Act, 2013 provides as follows: -

"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 sub-section (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 R1 Company whose name has been Struck Off, on satisfaction that the company was, at the time of its name being struck off, carrying on business or in operation or otherwise, it is just to restore the name of the company to the register of companies.

11. In the view of above provisions, facts, circumstances, evidences, this tribunal is of opinion that, this R1 Company should be restored to protect

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the interest of the government. Further the R2/RoC, Chennai had not made any objections to restore the company in the name of the Register of Companies. It is ordered as under;

(i) The Registrar of Companies, Chennai, the R2 herein, is ordered to restore the original status of the Company i.e. **M/S. FOCUS GUARDING SOLUTIONS PRIVATE LIMITED** 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";

(ii) The Appellant is permitted to deliver a certified copy of this order with RoC, concerned within 30 days of the receipt of this order;

(iii) On such delivery and after duly complying with above directions, the Registrar of Companies, concerned is directed to, on office name and seal, publish the Order in the Official Gazette, and

(iv) This Order is confined to the violations, which ultimately lead to the impugned action of "striking off" of the Company, and it will not come in the way of RoC, concerned to take appropriate action(s) in accordance with law, other violations/offenses, if any, committed by the Respondent company R1 prior to or during the "Striking Off" period.

(v) The Appellant shall submit a report to the RoC, concerned furnishing details of the tax assessed and recovered from the Company after revival of the Company.

12. Accordingly, **Comp. Appeal /26 (CHE)/2023** is hereby allowed and disposed off.

-SD-

RAVICHANDRAN RAMASAMY
MEMBER (TECHNICAL)
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-SD-

JYOTI KUMAR TRIPATHI
MEMBER (JUDICIAL)