

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
SPECIAL BENCH - II, CHENNAI**

CA /42 (CHE) / 2023

(Under Section 252(1) of the Companies Act, 2013)

In the matter of M/s. WINMAX LEATHERS PRIVATE LIMITED

MR. UTIRAKUMARAN M

Shareholder of **M/s. WINMAX LEATHERS PRIVATE LIMITED**,
96/2 Anna Salai, Kannayiram Street, Nagelkeni, Chrompet,
Chennai, Tamil Nadu - 600044

... Appellant

-Vs-

REGISTRAR OF COMPANIES, CHENNAI

Block No.6, B Wing - 2nd Floor, Shastri Bhawan,
26, Haddows Road, Chennai, Tamil Nadu - 600 034

... Respondent

Order Pronounced on 22nd March 2024

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Shri. SANJIV JAIN, MEMBER (JUDICIAL)

Shri. RAVICHANDRAN RAMASAMY, MEMBER (TECHNICAL)

For Appellant: Mrs. Jayashree S Iyer, Company Secretary

For Respondent: Mr. Avinash Krishnan Ravi, Advocate

This Appeal has been filed by **Mr. UTIRAKUMARAN M** in the capacity of the Shareholder of the subject matter Company namely, **M/s. WINMAX LEATHERS PRIVATE LIMITED**, under Section 252 (1) 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, Concerned 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. Winmax Leathers Private Limited

b)	CIN No.	U51900TN2010PTC077313
c)	Date of Incorporation	09.09.2010
d)	Registered Office Address	96/2 Anna Salai, Kannayiram Street, Nagelkeni, Chrompet, Chennai, Tamil Nadu - 600044
e)	STK-5 Date	22.12.2021
f)	STK-7 Date (Publication Date)	14.02.2022 (19.02.2022)
g)	Reasons for Strike Off	The company has not filed its statutory annual returns, financial statements and has not been carrying on any business or operation for a period of two immediate preceding financial years and did not make any application within such period for obtaining the status of dormant company under section 455 of the Companies Act to the RoC / Respondent.

3. It is stated that the main object of the Company is to carry on the business as processors, Makers, inventors, converters, traders, buyers, sellers, Retailers, wholesalers etc., relating to leather and leather products. The detailed objects are set out in the Memorandum of Association.

4. It is stated that, the company involves in export activities of its products and has offices at Chennai and HongKong. The appellant works in both offices and since 2018 he started working at HongKong office. The applicant has been taking care of the company activities and due to Covid - 19 pandemic and subsequent travel restrictions he was unable to reach India. Further he was not aware of the statutory filing requirements in respect of the subject company. This led to non-compliance and company has been struck off.

5. Upon notice, the Respondent/ RoC filed the Report on 05.01.2024, wherein it is stated as follows,

“The Appellant in the instant Appeal has stated the reason for non-filing of Annual Return with the Register of Companies within the stipulated time is that the appellant herein was stationed at Hong Kong Office, due to COVID – 19 and the pandemic, the appellant could not travel to India and undertake the compliance with regard to filling of returns. As the appellant was not aware of the Procedures under the companies act, the appellant did not file returns from the FY 2018 -19.”

Other than the above there is no other significant objection from the Respondent /RoC.

6. We have heard the submissions of the Appellant Company and the Respondent/RoC as well.

In order to substantiate the plea of revival, the Appellant has placed the following documents on records.

- Income Tax Returns for the AY 2021 - 2022
- Annual Auditor report, Audited Balance sheet for the FY 2017 – 2018, FY 2019 - 2020
- GSTR -3B for the Month of Dec 2022 – 2023

This Appeal is for restoration of the name of the subject company in the register maintained by the Respondent / RoC in order to engage in active business for which it was incorporated. RoC Chennai also has no objection on the proposal of the reviving the Struck off company.

7. Section 252 (1) of the Companies Act, 2013 provides as follows: -

“Section 252: Appeal to Tribunal,

(1) Any person aggrieved by an order of the Registrar, notifying a company as dissolved under section 248, may file an appeal to the Tribunal within a period of three years from the date of the order of the Registrar and if the Tribunal

is of the opinion that the removal of the name of the company from the register of companies is not justified in view of the absence of any of the grounds on which the order was passed by the Registrar, it may order restoration of the name of the company in the register of companies:

Provided that before passing any order under this section, the Tribunal shall give a reasonable opportunity of making representations and of being heard to the Registrar, the company and all the persons concerned:

Provided further that if the Registrar is satisfied, that the name of the company has been struck off from the register of companies either inadvertently or on the basis of incorrect information furnished by the company or its directors, which requires restoration in the register of companies, he may within a period of three years from the date of passing of the order dissolving the company under section 248, file an application before the Tribunal seeking restoration of name of such company."

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 as on the date of its Struck Off or otherwise it is just to do so.

8. 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, 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."*

9. 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'.

10. In this case, the Appellant who is a shareholder cum Ex-Director of the Strike Off Company, has submitted that the subject Company is ready and willing to comply with the directions and rectify the non-compliances. We are of the opinion that this 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.

11. In the view of above said facts and circumstances, this tribunal considers the records placed before and in line with the Provisions, judgements discussed above and it is ordered as under;

(i) The Registrar of Companies, concerned is directed to restore the original status of the Company i.e. **M/s. WINMAX LEATHERS 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**".

(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 will 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.2,00,000/- (Rupees Two Lakh 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", 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 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.

12. Thus the Company Appeal CA /42 (CHE) / 2023 stands *allowed* on the aforementioned terms and *disposed off*.

-Sd/-
RAVICHANDRAN RAMASAMY
MEMBER (TECHNICAL)

-Sd/-
SANJIV JAIN
MEMBER (JUDICIAL)

Order Pronounced under Rule 151 of NCLT Rules 2016, by Hon'ble Technical Member, Ravichandran Ramasamy on behalf of the Special Bench Comprising of Sanjiv Jain, Member (Judicial) and Ravichandran Ramasamy, Member (Technical).

-Sd/-
Court Officer