(2020) 12 NCLT CK 0086

In the National Company Law Appellate Tribunal

Case No : Appeal No. 474/252/ND Of 2020

MVS Impex Pvt. Ltd. APPELLANT

Vs

Registrar Of Companies RESPONDENT

Date of Decision : 29-12-2020

Acts Referred:
Companies Act, 2013 — Section 248, 252

Citation : (2020) 12 NCLT CK 0086

Hon'ble Judges : P.S.N. Prasad, J;Dr. V.K. Subburaj, Member (Technical)

Bench : Division Bench

Final Decision : Allowed

Judgement

1. This is an appeal which has been preferred u/s 252 of the Companies Act, 2013 by the Appellant Company in relation to an order of striking off the

name of the Appellant Company passed by the Respondent with effect from 28.10.2019 under the provisions of Section 248of the Companies Act,

2013. Learned authorized representative for the Appellant represents that the Appellant Company was incorporated on 27.11.2006 under the

provisions of Companies Act, 1956 and has its registered office at 4378/4B, Office No.202, JMD House, Ansari Road, Daryaganj, New Delhi-110002.

The Company is engaged in the business to produce, process, pack, remove, improve, sell, import, design market, procure, print, supply, work and to

act as agent, consultant etc.. Learned authorized representative for the Appellant represents that the Appellant company has been active since

incorporation and has also been maintaining all the requisite documentation, as per the provisions of the Companies Act, 1956/2013. However,

compliance in relation to the provisions of Companies Act, 2013 with the Respondent RoC by filing annual returns and financial statements has been omitted to be complied with but the said omission is not mala fide.

2. Upon notice to the Registrar of Companies (""Roe""), the RoC has filed its affidavit in which he pleads that the company may kindly be directed to

prove that it was carrying on business or was in operation and that it is just that the name of the company be restored to the register. However, the

Ld. AROC for the RoC appeared and conveyed RoC's no objections to restoration of the Appellant Company subject to terms.

Despite opportunities given, there was no response from the Income Tax Department and it was decided to proceed further.

3. We have considered the plea of the Appellant and the representations of RoC. It is evident from the plea of the Appellant that it admits the default

and questions the due process undertaken by the RoC in striking off the name of the Appellant Company as envisaged under Section 248 of the

Companies Act, 2013. However, the Appellant is seeking restoration of its name in the register as maintained by RoC relying on the ground that the

Appellant as of date is in business and has revenue from operations and in the circumstances, it is just that the name of the Company should be

restored on the register of RoC as maintained by the Respondent. In order to sustain the said plea, the Appellant has placed before us the following

documents:

i. True Copies of Financial Statements and Balance Sheet for the Financial Years 2016-17 to 2018-19 with details of revenue from operations as

Rs.15,08,300.97 for 2018 and Rs 73,52,158.90 for 2019 respectively.

ii. Acknowledgement for filing Income Tax Returns for the years 2016-17 & 2019-20 on record.

4. A perusal of the documents referred to in the paragraph above, reflects that the appellant has business operations which necessitate restoration of

its name in the Register of Companies. The assumption of RoC that the company was not in operation was merely on grounds of non-filing of the

Statutory Returns. The Act itself provides for redressal of these defaults. A step as stringent as what has been taken at least requires an opportunity

to the appellant to take remedial measures. Merely to disallow restoration on grounds of its failure to file annual returns would neither be just nor

equitable. As per several decisions of various Courts it should only be in exceptional circumstances that Courts should refuse restoration where the company has been struck off for its failure to file annual return as that would be excessive or inappropriate penalty for that oversight.

5. Accordingly, the appeal is allowed subject to payment of costs of Rs. 50,000/- to the Prime Minister Care Fund. The restoration of the Appellant

Company's name in the Register will be subject to their filing all outstanding documents for the defaulting years as required by law and completion of

all formalities, including payment of any late fee or other charges which are leviable by the Respondent for the late filing of statutory returns. The

name of the Appellant Company shall then stand restored in the Register of the RoC, as if the name of the company had not been struck off.

6. The direction for freezing the bank account(s) of the Appellant Company, if on this ground, shall consequently be also set aside immediately to

enable the company to carry out its business operation. Compliance of this order for restoration shall be made by the Respondent with all its

consequential effects within one week of compliance by the Appellant.

7. Let the copy of the order be served to the parties.