

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) No. 09 of 2020

IN THE MATTER OF:

Before NCLT

Before NCLAT

M/s. Mohindera Chemicals

Petitioner

Appellant

Private Limited

A-1/118, 2nd Floor,

Safdarjung Enclave,

New Delhi-110029

Versus

1. Registrar of Companies

Respondents

Respondent No.1

NCT of Delhi & Haryana &

1 to 2

Anr.

4th Floor, IFCI Tower,

61, Nehru Place,

New Delhi-110019

2. Income Tax Department

Respondent No.2

Chamber no. 428 & 429,

Delhi High Court,

Sher Shah Road,

New Delhi-110003.

For Appellant:

Mr. Virendra Ganda, Sr. Advocate with Ms. Shelly Khanna, Advocates.

For Respondents:

Mr. Rajesh Kumar and Mr. Kumar Mihir, Advocate for R-1.

Mr. Deepak Anand and Mr. Vipul Agrawal, Advocate for R-2.

ORDER
(Through Virtual Mode)

09.09.2020: Heard Learned Senior Counsel for the Appellant and Advocate Shri Rajesh Kumar for ROC and Advocate Shri Deepak Anand for Respondent No. 2. The present Appeal has been filed by the Appellant M/s Mohindera Chemicals Private Limited as Appellant claims that the name for the Appellant was wrongly struck off from the Registrar of Companies with effect from 08.08.2018 by the Respondent No. 1. The Learned Counsel has submitted that the Registrar of Companies had issued a public notice STK-5 as seen at Page No.-177 on 18.06.2018 and later on by Order STK-7 (Page No.-179) the name of the present Company was struck off. Counsel states that there were various other Companies also which were struck off by these same Orders.

2. The Learned Counsels submits that the Appellant Company has all along has doing business and had filed Balance Sheet till 2013-2014 and thereafter, there was some lapse on the part of the Appellant and the Balance Sheets remained to be filed. The Learned Counsels submits that merely, because the Balance Sheet remained to be filed the ROC presumed that the Company is not functional and the name got struck off. It is stated that if the name is not restored the Appellant Company will seriously suffer. The Learned Counsel points out documents to show that there are huge outstanding dues which the

Company has to receive and the Debtors are ready to pay but are unable to pay because the name is struck off. Counsel pointed out that Balance Sheets of 2014-2015 till 2018-2019 are also ready, copies of which have been filed with the 'Rejoinder'. Counsel states that the Balance Sheet if perused show that the Appellant Company has got property and the contents of the Balance Sheets show that the Company has been functional. It is stated that the Impugned Order observed that the returns which were filed, were merely to complete formality and there was no evidence of carrying on business. It has been stated that if the Reply of the Income Tax Department, Diary No. 19303 is pursued. Income Tax Department has also stated that the assessment for the year 2011-2012 was completed on 29.12.2018 and there is an outstanding demand of Rs. 7,79,74,290/- which is still pending for recovery. Counsel states that from these documents itself it is clear that the Company was functional and for lapse of not filing the Balance Sheet and returns the name is struck off. Counsel states that the Appellant is ready to go in for settlement in the case of Income Tax dues also and for all such reasons it is necessary to restored the name of the Appellant Company to the Register of Companies.

3. Counsel for ROC submits that there was lapse on the part of the Appellant Company and the ROC followed due procedure and thereafter, the name got struck off as the Appellant did not respond to the Public Notice.

4. We have gone through the material placed before us. It appears that the Appellant Company has been functional as can be seen from the copies of Balance Sheets pointed out and considering the replies by the Respondent No. 1 & 2. The ROC has stated in its Reply that it has no objection to grant prayer of Appellant.

5. For the above reasons, **we set aside the Impugned Order.** The name of the Appellant Company shall be restored to the Register of Companies by the Respondent No. 1. This is Subject to: (i) Appellant pays costs of Rs. 1 lakh (One Lakh) to Respondent No. 1. (ii) The Appellant files all the outstanding Documents/ Balance Sheets and Returns within two months along with penalties and late payment charges etc. as may be due and payable under Law.

6. Appeal is disposed accordingly.

[Justice A.I.S Cheema]
Member (Judicial)

[Dr. Ashok Kumar Mishra]
Member (Judicial)

Sim/md