

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) No. 76 of 2019

[Arising out of Order dated 20th February, 2019 passed by the National Company Law Tribunal, Division Bench, Chennai in CA/1421/(252)/2018]

IN THE MATTER OF:

Chandrasekar Muruga,
S/o Sh. Muruga Sundaram,
Flat No. 6, 1st Floor,
SS Apt, N No. 6, O No.20,
Periyar Road, Thiyagaraya Nagar,
Tamil Nadu.

...Appellants

Vs

The Registrar of Companies,
2nd Floor, Shastri Bhawan,
26, Haddows Road,
Chennai – 600 006.

....Respondent

Present:

For Appellant: Ms. Haripriya Padmanabham and Ms. Pooja Dhar,
Advocates.

For Respondent: Mr. P. S. Singh, Advocate.

J U D G M E N T

BANSI LAL BHAT, J.

The Appellant, claiming to be the Shareholder and Director of 'M/s Matrix Power Controls India Pvt. Ltd.', has filed the instant appeal assailing the impugned order dated 20th February, 2019 by virtue whereof

the National Company Law Tribunal at Chennai (hereinafter referred to as 'Tribunal') declined to restore the name of 'M/s Matrix Power Controls India Pvt. Ltd.' (hereinafter referred to as 'Matrix Power') on the Register of Companies for failure to file the returns with the ROC from financial year 2009 onwards. The impugned order is challenged primarily on the ground that the Registrar of Companies (hereinafter referred to as 'ROC') has improperly exercised jurisdiction under Section 248 of the Companies Act, 2013 (hereinafter referred to as the 'Act') and the Tribunal failed to notice that the parameters set out in Section 252(3) of the Act had been satisfied by the Matrix Power.

2. It is not in controversy that 'Matrix Power' incorporated as a 'Private company' limited by shares on 31st January, 2008 with the objective of carrying on business of manufacturing and dealing in stabilizers and automatic power factor correction panels filed its last annual returns for the year ending 31st March, 2009 with the ROC. Allegedly it failed to file its financial statements and annual return for the financial years 2009-10 to 2017-18. This lead to initiation of action under Section 248(1) of the Act by ROC finally culminating in striking off the name of the 'Matrix Power' from the Register of Companies. As per the record of office of ROC 'Matrix Power' was neither carrying any operation for a period of two immediately preceding financial years nor had it filed any application within such

period for obtaining the status of a Dormant Company. On consideration of the matter, the Tribunal was of the view that since the 'Matrix Power' had not filed financial statements and annual returns for the financial years 2009-10 to 2017-18 and there was no adequate reason to restore the company's name, there was no scope to order restoration of the company's name in the Register of Companies. The Tribunal has noted the submission of 'Matrix Power' that the balance sheet of the company was prepared and annual general meetings were held on time and duly signed by the respective Directors but for reasons unknown the concerned officials failed to upload the same. The Tribunal observed that the 'Matrix Power' failed to file the returns with the ROC from 2009 onwards and there was no documentary proof that the statutory compliances had been made.

3. Reiterating its stand taken before the Tribunal, ROC has filed its report stating therein that consequent upon failure of 'Matrix Power' to file annual return and balance sheet subsequent to financial year 2008-2009, ROC initiated action under Section 248 of the Act against the 'Matrix Power' and the name of the 'Matrix Power' was struck off from the Register of Companies because as per records of ROC neither the company was carrying any operation for a period of two immediately preceding financial years nor did it apply within such

period to obtain the status of a Dormant Company. It is further stated that the procedure in terms of Section 248 of the Act r/w 'Companies (Removal of name of companies from the Register of Companies) Rules, 2016' has been adhered to and the company has admitted its defaults. It is however admitted that the Company has enclosed Income Tax Acknowledgments for Assessment Years 2008-09 to 2017-18 with the petition. It is admitted that the Income Tax Returns and Bank Statements submitted by the Company show that there have been significant accounting transactions during the aforesaid period. This report is in consonance with the report filed before the Tribunal which forms Annexure 'J' to Volume II of the paper book page 313 (at page 314).

4. From the aforesaid stand of ROC, Chennai, it is abundantly clear that the petition of 'Matrix Power' for restoration of its name in the Register of Companies has been dismissed for non-filing of statutory returns since the financial year 2009-10 and its failure to assign cogent reasons for such default.

5. Learned counsel for Appellant submits that the 'Matrix Power' was in operation and carrying on business during the relevant period which is eloquently evidenced by the Income Tax Acknowledgments for

the Assessment Year spanning 2008-2009 to 2017-2018 and bank statements demonstrating significant accounting transactions during the aforesaid period and this fact having been brought to the notice of the Tribunal not only by the company but also by the ROC, there was no justification in declining to restore the name of company improperly struck off by the ROC merely for failure to file the annual returns. Learned counsel for the Respondent, confronted with the report of ROC submitted that the fact that the Income Tax Statements were consistently filed by the Company shows that the Company was aware of legal compliances, yet choose to neglect filing of annual returns and financial statements in terms of provisions of the Act. It is submitted that no explanation has been offered for such non-compliance.

6. Having bestowed our consideration to the factual matrix of the case, it is abundantly clear that 'Matrix Power' has been struck off the Register of Companies on the ground of non-filing of financial statements and annual returns for the financial years 2009-10 to 2017-18, though it is not disputed that the company has filed Income Tax Returns and Bank Statements for Assessment Years 2008-09 to 2017-18, which demonstrated significant accounting transactions during the aforesaid period. The only conclusion deducible from this

documentary evidence and unhesitatingly accepted by the Respondent – ROC is that ‘Matrix Power’ had been carrying on business and was in operation during the relevant period. It being admitted by ROC that the accounting transactions undertaken by the company qua its avowed objective were significant, the business being carried on by the company cannot be termed cosmetic or inconsequential. That being the factual position emanating from record and substantiated by documentary proof endorsed and accepted by the Respondent, the finding that the company was not carrying on any business or operation for a period of two immediately preceding financial years cannot be said to be based on record and substantiated by the report of ROC. It has been noticed elsewhere in this judgment that the stand taken by ROC before the Tribunal in regard to significant accounting transactions undertaken by the company during the relevant period and consistently till 2017-18 is based on documentary evidence and the same stand has been reiterated before this Appellate Tribunal. It is therefore futile to address the issue of non-adherence to the procedural requirement on the part of ROC in striking off the name of the Company within the ambit of Section 248 of the Act. What stares in the face of impugned order is the fact that the Tribunal has overlooked the factum of the significant accounting transactions admittedly undertaken by the company during the relevant period

justifying no conclusion other than the one that the company was in operation and carrying on business. Ironically the ROC, while admitting this factual proposition, sought to strike off the name of the company from its register ignoring and shutting out the vital evidence though in its report before the Tribunal as also before this Appellate Tribunal such proposition of fact is pleaded and reiterated. It is therefore safe to conclude that removal of name of the company from the Register of Companies was not justified as the ground projected i.e. the company was not in operation and not carrying out business during the relevant period did not exist. The finding recorded by the Tribunal being erroneous cannot be supported and same is liable to be reversed.

7. Viewed in the light of foregoing discussion we are of the considered view that a just ground exists for restoration of the name of the company in the Register of Companies. The appeal is accordingly allowed and the impugned order is set aside. Respondent is directed to restore the name of 'M/s Matrix Power Controls India Pvt. Ltd.' to the Register of Companies subject to statutory compliances being filed together with the prescribed fees and penalties leviable thereon as mandated by law. This shall be done within thirty days from the date of pronouncement of this judgment unless the period is extended by

the Respondent – Registrar of Companies, Chennai beyond the aforesaid period.

8. Appeal allowed. There shall be no orders as to costs. A copy of this judgment be forwarded to Respondent – ROC, Chennai for information and necessary compliance.

[Justice Bansi Lal Bhat]
Member (Judicial)

[Balvinder Singh]
Member (Technical)

NEW DELHI

29th May, 2019

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