

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**

**NEW DELHI**

**COMPANY APPEAL(AT) NO.354 OF 2018**

(ARISING OUT OF IMPUGNED ORDER DATED 14.8.2018 PASSED BY THE NATIONAL COMPANY LAW TRIBUNAL, BENCH III, NEW DELHI IN APPEAL NO.121/ND/2018)

**IN THE MATTER OF:**

Your Own Green Area Creations Pvt Ltd,  
61-A, Pratap Nagar,  
Mayur Vihar Phase I,  
Delhi-110092

Appellant

Vs

Registrar of Companies,  
4<sup>th</sup> Floor,  
IFCI Towers,  
Nehru Place, New Delhi

Respondents

**For Appellant:-**Ms. Jyoti Rana, Advocate.

**For Respondents:** - Mr. Vijay Chandra Joshi, Advocate.

**JUDGEMENT**

**14.02.2019**

**JUSTICE A.I.S. CHEEMA**

This appeal has been filed by the appellant company being aggrieved by impugned order dated 14.8.2018 passed by National Company Law Tribunal, Bench III in appeal No.121/ND/2018 (The order has date printed as 14.8.2018 but signatures of the Members have dates added as of 20.8.2018). By the impugned order the appeal of the appellant for restoration of the name of the company in the register of companies filed under Section 252 of the Companies Act, 2013 (Act in short) was dismissed. The NCLT held that the appellant company which was struck off on 30.6.2017 had failed to show that it was in business or in operation in the two immediately preceding financial years.

2. We have heard learned counsel of the appellant and perused the appeal and reply filed by the ROC. The learned counsel for the appellant referred to para 3 and 4 of the impugned order which read as under:-

**“3. We have considered the plea of the Appellant Company on one hand and the Respondent on the other hand. The Appellant has not questioned the process followed by the Respondent in striking off the name of the Appellant Company and seeking restoration of its name in the register as maintained by RoC relying on the ground that the Appellant as of date is carrying on the business for which it was incorporated and it is in operation 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 the following evidences before us:**

**i. Profit and loss account statements for years ending 31.03.2017 showing revenue as Rs. 7,96,320/- and 31.03.2016 showing revenue as Rs. 4,96,814/-**

**4. It is seen that the apart from the financial statements the Appellant has failed to produce any other documents to show that it was carrying on operations during the relevant period or that there exists potential for future operations. In view of the fact that the financial statements are only internal documents and no other documents have been placed on record to support the claims made on basis of the financial statements, this Tribunal does not deem it fit to revive the Appellant Company. Further, in the appeal, at one place the Appellant has represented that the filings were not done because of a management dispute and in the next paragraph it appears that the Appellant is trying to pin the blame on the Company Secretary. Thus, such inconsistent statements do not inspire confidence of this Tribunal.”**

3. It is stated that making such observations the learned NCLT dismissed the appeal of the appellant. It is argued by the learned counsel that it was an error on the part of the Learned NCLT to hold that apart from financial statements appellant had failed to produce any such documents to show that the company was carrying on operation. The learned counsel referred to Annexure VI at Page 68 of the appeal to show that the appellant had in NCLT, vide Diary No.3701 of NCLT, on 19<sup>th</sup> April, 2018, filed the following documents:

- a) Affidavit for submission of Additional documents with NCLT.
- b) Copy of Bank Statements from 1.4.2013 to 31.3.2017 (duly certified)

c) Copy of Form 26 AS (Tax Credit Information) from AY 2014-15 to 2017-18.

d) Copy of Acknowledgement of Income Tax Returns from AY 2015-16 to AY 2017-18.

e) Copy of various agreements entered by the company.

4. Learned counsel for the appellant has pointed out that with such affidavit the appellant had filed certified copies of Banks statements for the period 1.4.2013 to 31.3.2017. The counsel pointed out at Page 73 to 100 in the appeal paper book to submit that bank statements themselves show that the company was in business and was in operation. Further documents are pointed out as annual tax statement for the years 2014-15 to 2017-18. Copies of which are at Page 101 to 116 in appeal paper book. Income tax returns for 2015-16 to 2017-18 are also pointed out. It is argued by the learned counsel for the appellant that all these documents were before the Learned NCLT but due to error these documents were not discussed and considered by the NCLT which took note only of the Profit & Loss statements which had been filed. The learned counsel referred to copy of STK 7, Page 56, to say that the company was struck off on 30.6.2017 and states that at that time the company was in operation is clear from bank statements. The learned counsel further pointed out copies of agreements to show that the appellant company was in the business of sale of Eco-friendly products and had entered into various agreements in this regard. It is stated that had the NCLT considered these documents, the appeal of the appellant would not have been rejected.

5. The Learned counsel for the ROC submitted that the company had filed its last Returns and Balance Sheet for the FY ending on 31.3.2013 and since then did no compliance and thus it was struck off after following the procedure.

6. It appears that the appellant had moved NCLT also for rectification on similar grounds that the material documents skipped consideration but it is stated that the application No.121/252/ND/2018(CA Bi,264/C-III/ND/2018) was later withdrawn. (A copy of the application and order has been filed vide Diary No.9540). The counsel submitted that the application was withdrawn as the NCLT expressed its inability to review for want of provisions.

7. Having gone through the submissions made and the material available on record, it does appear that there were various documents as enlisted above which had been filed but which skipped attention at the time of passing of the impugned order. The documents appear to be material documents for assessing whether the company was in business and/or was in operation when the company was struck off. In the absence of the documents being considered we are deprived of the views of the NCLT with regard to these various documents which have been pointed out. In the circumstances it is appropriate that the matter should be remanded back to the Learned NCLT to give fresh opportunity to the parties to make submissions and fresh decision.

8. The appeal is allowed. The impugned order is quashed and set aside. Appeal No.121/ND/2018 is restored to the file of NCLT, New Delhi Bench III. We remand the matter to NCLT with a request to re-hear the matter and decide the same considering the documents being relied on by the parties.

9. The parties are directed to appear before Learned NCLT on 05.03.2019. The appeal is disposed off with these observations. No order as to costs.

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

(Mr. Balvinder Singh)  
Member (Technical)