

GROUND OF REVIVAL OF COMPANIES

Short Summary:

In this Flash editorial, the author begins by referring the provisions of section 252 of Companies Act, 2013 relating to Revival of Companies STRUCK off from the record of the Registrar. The main thrust of the article, however, is upon the *“What are the Conditions required to be satisfied by NCLT before issue order for revival of Name of Company.”*

In this editorial author discuss the decisions of Hon'ble National Company Law Tribunal (NCLT), New Delhi, Principal Bench in case of S. K. Bajaj Rubber Private Limited v/s ROC Delhi. This article contains Ground on which a Company can be revive by application in NCLT.

This is article no. 251 of the series of editorials written by the author on corporate laws {Including Companies Act, 2013, SEBI, RBI Regulations, **IBC**, LLP Act, 2008 etc.}.

Case Law Detail:

Case Name	S. K. Bajaj Rubber Private Limited v/s ROC Delhi
Bench Name	The National Company Law Tribunal (NCLT), Principal Bench
Date of Order	08 th August, 2017
Section	252(3)

FACTUAL BACKGROUND:

1. Petition filed by the S. K. Bajaj Rubber Pvt Ltd and challenges the order of ROC for strike off the name of the Company. ROC exercises his power for strike off of Companies.

Under Companies Act, 2013 ROC has power to strike off the name of Company on the below mentioned two grounds:

248. (1) *Where the Registrar has reasonable cause to believe that—*

(a) a company has failed to commence its business within one year of its incorporation; [or]

(b) a company is not carrying on any business or operation for a period of two immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant company under section 455,

2. *Respondent....*The ROC struck off its name from the register on account of default in statutory compliances vide official Gazette Notification dated 31.05.2007.
3. *Petitioner....*The Company is active since inception and filed Financial with ROC upto 2003.
4. *Respondent....* The Company has not filed financial statement as per the Act, contravene the provision of the Act compelling the ROC to believe that Petitioner was not carrying on any business or was not in operation.
Profit and Loss account shown by the petitioner in petition not showing any business except sale of Rs. 1.5 lac in 2009.
Company produced IT return only for the year 2008-09 shows that company is not carrying out any business as the time of strike off.
5. *Hon'ble NCLT....* We have learned counsel for the parties and have perused the paper book with their able assistance. The provisions concerning restoration of the name of the company has been incorporate in section 252 of Act, 2013 which is pari material to section 5620 of Act, 1956.

PROVISIONS RELATING SECTION 252:

Section 252(1):

*Statutory Provisions: 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:*

Section 252(3):

*A company, or any member or creditor or workman thereof feels aggrieved by the company having its name struck off from the register of companies, the Tribunal on an **application** made by the company, member, creditor or workman before the expiry of twenty years from the publication in the Official Gazette of the notice under sub-section (5) of section 248 may, if satisfied that the company was, at the time of its name being struck off, carrying on business or in operation or otherwise it is just that the name of the company be restored to the register of companies, order the name of the company to be restored to the register of companies, and the Tribunal may, by the order, give such other directions and make such provisions as deemed just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off from the register of companies.*

Decision of the HON'BLE BENCH:

When we examine the facts of the present case, it becomes evident if any Company, or any member or creditor feels aggrieved by the order of ROC before expiry of 20 years. Section 252(3) contemplates that one of the three conditions are required to be satisfied before exercising jurisdiction to restore company to its original name on the register of the ROC namely:

- I. That the Company at the time of its name was struck off was carrying on business.
- II. Or it was in operation or
- III. It is otherwise just that the name of Company be restored on the register.

When we apply the aforesaid statutory parameters to the facts of present case it not shown that when it was struck off it was infact carrying on business or it was in operation.It filed Annual Return in 2003 'thus we find that section 252(3) would not come to the rescue of the petitioner.

THIS PETITION FAILS AND THE SAME IS DISMISSED WITH COSTS OF RS. 10,000/-.

CONCLUSION:

In the above case the Hon'ble NCLT has decided that, where an application for restoration of company was made by petitioners and petitioner doesn't fall in any of the criteria given under Section 252(3) such application cannot be accepted and dismissed the petition

As per language of Section 252(3) "It is otherwise just that the name of Company be restored on the register. **Here the question,**

- ❖ Whether 'having assets at the time of strike off" or 'Liabilities at the time of strike off' fall under condition no. 3?
- ❖ What is the ground fall under condition No.3?

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