

REVIVAL – ON THE GROUND OF ASSETS

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 *“Whether NCLT shall allow Revival of Company in the case struck off Company having assets.”*

In this editorial author discuss the decisions of Hon'ble National Company Law Tribunal (**NCLT**), New Delhi Bench in case of International Security Printers Private Limited v/s ROC Delhi. This article contain the answer of question that is whether a Company can be revive on the ground that at the time of struck off Company having assets in its name.

This is article no. 252 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	International Security Printers 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 International Security Printers 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 26.06.2007.
3. *Petitioner.... There was a pending case b/w the Company and tenant on the property of the Company. The same decreed in favour of Company.*
4. *Petitioner....*Roc has struck off 6000 Companies.
 - No notice was issued to them and neither did the roc adhere to any legal procedure which required a letter to be sent to the Company.
 - The gazette notification was required to be published and the copy of the notification was required to be sent to the registered office of the Company.
 - It is averred that without adhering to the aforesaid procedure, the impugned action is vitiated and is in gross violation of the principles of natural justice as no opportunity for hearing was given before taking the impugned step
5. *Petitioner....*The entire record of the Company has been entrusted to their Company Secretary for filling the required returns with the office of ROC who had let them down.
6. Respondent..... Proper step has been taken accordance with the statutory provision before striking off the name of Company.
 - Petitioner company did not file any financial statement since incorporation which gave rise to the belief that Company was not in operation
 - In the absence of details of Company Secretary default on the ground of absence of Company Secretary can not be believed.

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:

- I. *Hon'ble NCLT....Purushottamdass and Anr. (BulakidasMohta Co. P. Ltd.) V. Registrar of Companies, Maharashtra, &Ors., (1986) 60 Comp Cas 154 (Bom),* Wherein the Hon'ble Bombay High Court has held inter alia as hereunder:

“the object of section 560(6) [Corresponding section under Companies Act, 2013 is Section 252] of the Companies Act, is to give a chance to the Company, its members and creditors to revive the company which has been struck off by the Registrar of Companies, within period of

20 years, and give them an opportunity of carrying on the business only after the company judge is satisfied that such restoration is necessary in the interest of justice”

- II. Principle of Natural Justice: ROC however have failed to prove the allegation that no step were taken in compliance of the mandatory provisions of Section 252 (4),(5),(6) which are a pre requisite for striking off the name of Company from the Registrar. In the absence of impugned action of the Respondent would be arbitrary, illegal and against the principles of natural justice.
- III. Upon considering the facts and circumstances of the present case and in the light of the settled position of the law, I am of the view that it would be just and proper to order the restoration of the petitioner Company in the Register of Companies maintained by the Respondent.

THIS PETITION ACCEPTED WITH COSTS OF RS. 25,000/- TO BE PAID TO THE PRIME MINISTER RELIEF FUND.

NOTED:

Liberty is granted to the ROC to proceed with penal action against the petitioner, if so advised, on account of the petitioner's alleged default in compliance with any other provision of the Companies Act, 2013 and rules.

CONCLUSION:

In the above case the Hon'ble NCLT has decided that, where an application for restoration of company was made by petitioners on the ground noncompliance statutory provision by ROC or Assets in the Company etc. such application can be accepted and dismissed the petition

As per language of Section 248 "If ROC Strike off name of any company from its record suo-moto, it has to comply with the mandatory provision of Section 248 which are pre requisite for striking off name of Company from the Register. As per Section 248 ROC has to comply with the following provisions u/s 248:

- i. 248(1)- it has to send a notice to the company and all the directors of the company, of his intention to remove the name of the company from the register of Companies.and
Requesting them to send their representations along with copies of the relevant documents, if any, within a period of thirty days from the date of the notice
- ii. Publish the Notice u/s 248(1) in the Official Gazette for the information of the general public.
- iii. At the expiry of the time mentioned in the notice, the Registrar may, unless cause to the contrary is shown by the company, strike off its name from the register of companies, and shall publish notice thereof in the Official Gazette.
Here the Question: Whether ROC can remove the name of Company from the Register in the case "Company has replied the notice mentioned the cause to the contrary"
- iv. The Registrar, before passing an order for strike off, shall satisfy himself that sufficient provision has been made for the realization of all amount due to the company and for the payment or discharge of its liabilities and obligations by the company within a reasonable time.
Here the Question: Whether ROC suo-motocan Struck off the Company, in the situation where Company have **Liability**?"
- v. The ROC shall published Notice u/s 248(1) in English language in a leading English newspaper and at least once in vernacular language in a leading vernacular language newspaper, both having wide circulation in the State in which the registered office of the company is situated
Here the Question: Whether ROC suo-moto can Struck off the Company, without publishing the Notice u/s 24(1) in English language in a leading English newspaper?"

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