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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of Decision: 11.03.2025*+ **W.P.(C) 10726/2017, CM APPL. 43907/2017****HARSH PAL SINGH AND ANR.**PetitionersThrough: Mr. Arun Saxena, Mr. Amit Verma,
Advts.

versus

UNION OF INDIA AND ORS.RespondentsThrough: Mr. Bhagwan Swarup Shukla,
CGSC with Mr. Sarvan Kumar, Mr.
Satyam Singh, Advts. with Mr.
Denning K. Babu, Delhi RoC
(through VC)**CORAM:****HON'BLE MS. JUSTICE TARA VITASTA GANJU****TARA VITASTA GANJU, J.:** (Oral)

1. Learned Counsel for the Petitioners submits that although the present Petition was filed with multiple prayers, the Petitioners had, on the last date of hearing, restricted themselves to prayer (H), which is set out below:

“H. Direct the Respondent no. 1 and 2 herein to change back the status of the Respondent no. 3 Company from "Active" to "Struck-off" as the same was finally approved by the Respondent no. 2 on 11.01.2016 (notice u/s 560(5)) on an application of FTE filed by the Petitioner no. 1;”

2. The principal grievance of the Petitioners is that the Petitioners' company i.e. Ambe Organic Food Products Pvt. Ltd. [hereinafter referred to as 'the Company'] was revived after being struck off without following the due process and in contravention of provisions of Section 560(5) of the



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Companies Act, 1956 [hereinafter referred to as '1956 Act'] which is *pari materia* to proviso of Section 248 of the Companies Act, 2013 [hereinafter referred to as '2013 Act'].

3. Learned Counsel for the Petitioners submits that originally the Company was incorporated on 15.06.2009, with two Directors and two Shareholders i.e. Petitioner No.1 and one Sh. Niranjn Mittal. However, since its inception, the Company could not start operations and no bank account was also opened by the Company. Learned Counsel submits that in view of *inter se* disputes between the Petitioners and the said Mr. Niranjn Mittal, the Company passed a resolution on 15.01.2015 for cessation of the said Sh. Niranjn Mittal as a Director of the Company under Section 167 read with 174(2) of the 2013 Act and appointed the wife of Petitioner No.1 as the alternate Director and as a shareholder of the Company. The Petitioners thereafter applied for striking off the name of the Company in terms of Fast Track Exit ('FTE') form issued under the guidelines of Ministry of Corporate Affairs.

3.1 Learned Counsel submits that in the meantime, the Petitioners had also received show cause notices for non-compliance of various statutory provisions under the 2013 Act. Learned Counsel further submits that on 11.01.2016, the Company received a communication from Respondent No.2 that the name of the Company has been struck off from the Register of Companies.

3.2 The matter however did not end there. The Company was ostensibly revived and the Petitioners and the Company were penalized for non-compliances of statutory obligations.



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4. Learned Counsel for the Petitioners submits that once a company has been struck off, its revival can only be done in accordance with the provisions of the Act. Reliance is placed on the second proviso to Section 252 of the 2013 Act to submit that in certain circumstances, a Company may be restored by Respondent No.2, however, the circumstances are that the Company has either inadvertently or on the basis of supplying incorrect information been struck off. Learned Counsel submits that the Petitioners had applied for striking off or removal of the name of the Company from the Register of Companies, so that there was no question of any inadvertent striking off the Company. It is further contended by the learned Counsel for the Petitioners that once the name of the Company has been removed from the Register of Companies on 11.01.2016 thereafter the change of status of the Company from “strike off” to “active” is arbitrary and contrary to the provisions of law.

5. Learned Counsel for the Respondents has raised one contention in the matter. Learned Counsel submits that the Petitioner No.1 is a disqualified Director and thus he was not in a position to apply for striking off the name of the Company on 13.08.2015 when the FTE form was signed. Learned Counsel submits that in view of this error that Respondent No.2 deemed it appropriate to revive the Company which was subsequently revived.

6. In Rejoinder, learned Counsel for the Petitioners draws the attention of the Court to two documents. Firstly, he seeks to rely upon the Board Resolution dated 14.03.2015 passed by the Board of Directors of the Company authorising Petitioner No.1 to take appropriate steps to strike off



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the name of the Company. Secondly, he seeks to rely upon Annexure P-2 to submit that the date of disqualification of Petitioner No.1 is 01.11.2016 (wrongly mentioned as 01.01.2016 in the table). Learned Counsel thus submits that as on the date of filing of the complaint and FTE form, the Petitioner No.1 was not disqualified.

7. Undisputably, when the FTE form was filed, the Petitioner No.1 was not disqualified as a Director, thus, the objection of the Respondents is without any merit.

8. The issue in the present case hinges upon the second proviso of Section 252 of the 2013 Act which while discussing Appeals sets out that in the event the name of a company has been struck off from the Register of Companies either inadvertently or on the basis of incorrect information furnished by the company or its directors, and such Company requires restoration in the Company; Register, the Registrar of Companies (Respondent No.2) is to take appropriate steps before the National Company Law Tribunal [hereinafter referred to as “NCLT”] in this behalf. It apposite to extract second proviso to Section 252 of the 2013 Act is set out below:

“252. Appeal to Tribunal.—(1) 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:

Provided that before passing any order under this section, the Tribunal shall give a reasonable opportunity of making representations and of being heard to the Registrar, the company and all the persons concerned:

Provided further that if the Registrar is satisfied, that the name of the



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company has been struck off from the register of companies either inadvertently or on the basis of incorrect information furnished by the company or its directors, which requires restoration in the register of companies, he may within a period of three years from the date of passing of the order dissolving the company under section 248, file an application before the Tribunal seeking restoration of name of such company...”

[Emphasis Supplied]

9. The plain reading of this proviso shows that where the Registrar of Companies feels that the name of the company has been struck off from the Register of Companies either inadvertently or on the basis of incorrect information furnished (as has been stated to be the case by the Respondents in the present Petition), the Registrar of Companies may within a period of three years from the date of passing of the order dissolving such company under Section 248 of the 2013 Act, file an application under Section 252 of the 2013 Act seeking restoration of the name of such company before the Tribunal.

9.1 Thus the procedure, as set out in second proviso to Section 252 of the 2013 Act, is that the Registrar must, within a period of three years from the date of order of dissolving the company, file an application before the National Company Law Tribunal seeking restoration of such company.

10. Concededly, the Respondent No.2 has taken no such steps as are required under the provisions of the 2013 Act, yet the Company was revived. In addition, since the order dissolving the Company was dated 11.01.2016, such steps were required to be taken by the Respondent No.2 within three years from such date – which has also not been done. Thus, the action of the Respondent No.2 cannot be sustained.



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11. The present Petition is accordingly allowed.
12. Respondent No.2 is directed to strike off the name of the Company from the Register of Companies and take all necessary steps in accordance with law in respect thereof.
13. The pending Application stands disposed of.
14. The parties shall act based on the digitally signed copy of the order.

TARA VITASTA GANJU, J

MARCH 11, 2025/jn/pa

Click here to check corrigendum, if any