IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court-I)
KOLKATA

Appeal No.89/ KB/2023

An Appeal u/s. 252(1) of the Companies Act, 2013;

In the Matter of :

YOGOMAYA MARKETING PRIVATE LIMITED (CIN: U74999WB2012PTC179235)
…….Struck Off

-And-

Income Tax Officer, Ward 8(2), Kolkata.

....…Appellant

-Versus-

THE REGISTRAR OF COMPANTES, WEST BENGAL, & Others

…….Respondents

Date of Pronouncement: 26.08.2024

CORAM:

Smt. Bidisha Banerjee : Member (Judicial)

Shri Balraj Joshi : Member (Technical)

Appearances (via Video Conferencing / Physically)

Mr. Ajay Chaubey, Adv.	] For the Petitioner (ITO)
Ms. Hema Mukherjee, Adv.	]
Ms. P. Panja, Adv.	]
Mr. Chandan Ji, AROC,	] For the Office of RoC, West Bengal

O R D E R

Per: Balraj Joshi, Member (Technical)

1. This is an appeal preferred by Income Tax Officer, Ward 8(2), Kolkata under Sec. 252 (1) of the Companies Act, 2013 for restoration of the name of the company, **Yogomaya Marketing Private Limited** in the register of Registrar of Companies, West Bengal.

2. The name of the respondent company had been struck off on **24.08.2018** while the appeal has been filed on **05.07.2023.** It is noteworthy that the period of limitation specified in Section 252(1) is 3 years. However, taking cognizance of the Hon'ble Supreme Court's order in the Suo- motu writ petition no. 3 of 2020 and its later revisions, whereby the period from 15th March 2020 to 28th Feb 2022 would get deducted from the permissible period of limitation in the wake of Covid -19 Pandemic; the appeal is within specified period of limitation.

3. Ld. Counsel for the petitioner present. AROC, for the office of ROC, West Bengal present.

4. Court Notice was issued to the respondent and to the company. Affidavit of service proving service of notice is filed. We are satisfied with proper delivery of notice. However, there is no representation by any of the directors of the struck off company.

5. The appellant contends that the name of the Respondent company had been struck off by the ROC, W.B., in compliance of the provisions under Sec.248 (5) of the Companies Act, 2013 thereby the name of the respondent company had been removed from the Register of Companies and the said company was dissolved.

6. The appellant further contends that the proceedings under the Income Tax Act, 1961 are pending for Assessment Year 2013-14 against the Company and during the pendency of proceedings, the name of the respondent company had been struck off. Aggrieved by the order of striking off the name of the company, this application was filed by the Income Tax Officer praying for restoration of the respondent company to the register of Registrar of Companies and further to rectify the Master Data by modifying the status from **'struck off'** to '**active**'.

7. It is discernible that as per paragraph 2 of CBDT letter F. No. 225/423/2017-1TA.II dated 29/12/2017, appeal for restoration of name of the struck off company shall be made by the Income Tax department if;

- **i.** The proceedings under section 143(3)/144/147/153A/153C set aside cases were already in progress/pending or
- **ii.** Contemplated in future against the company,
- **iii.** Departmental appeals initiated were pending
- **iv.** Penalty proceedings already initiated were pending;
- **v.** Prosecution proceedings were initiated launched.

8. It is submitted that the respondent company has not paid income tax dues for Assessment Year 2013-14 amounting to Rs. 1,11,17,727/-, and the recovery proceedings u/s 147 is pending against the respondent company and that the respondent company has committed serious violation of provisions of Income Tax Act rendering the entity liable to consequences as per the Income Tax Act. The restoration of the Company to take the pending proceedings to a logical conclusion.

9. Notices were issued to the respondents. ROC, W.B. has filed his report submitting that it has no objection to the application being allowed.

10. Upon hearing the arguments advanced on the side of the appellant and the Ld. ROC, West Bengal, and also in terms of the CBDT circular (supra), we are satisfied that the name of the respondent company is required to be restored to the Register of Companies since proceedings under the Income Tax Act, 1961 are said to be pending for Assessment Year 2013-14 against the Company. In these circumstances, if name of the company is not restored it would cause great prejudice to the appellant and loss of Revenue to the exchequer.

11. In the result, the appeal is allowed by restoring the name of the company in the register of Registrar of Companies, West Bengal with a direction to modify the status of the company from "**struck off**" to '**active**' within 30 days from the date of receipt of this order.

12. Appeal No. 89/KB/2023 is allowed and disposed of.

13. There shall be no order as to costs.

14. Certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

Balraj Joshi
Member (Technical)

Bidisha Banerjee
Member (Judicial)

This Order singed on 26.08.2024

A.D[Steno]