

R Narayanasamy vs The Registrar Of Companies Tamil Nadu on 26 November, 2020

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI
Note to the Registry

In view of the divergent judgements delivered by the Hon'ble Members, on 26th November, 2020, Registrar of 'NCLAT' is to place the record in Company Appeal (AT) No. 171 of 2020 together with the copies of the said judgements before the Hon'ble Acting Chairperson of 'NCLAT' for constituting appropriate Bench / nominating Hon'ble 3rd Member for rendering his opinion / decision in Appeal.

[Justice Venugopal. M]
Member (Judicial)

[Dr. Alok Srivastava]
Member (Technical)

26th November, 2020
NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) No. 171 of 2020

(Arising out of Impugned Order dated 5TH May, 2020 passed by the Adjudicating Authority/National Company Law Tribunal, Chennai Bench in Company Petition No. CA/06/2020)

IN THE MATTER OF:

R Narayanasamy
55 G, Ramasamy Naidu Nagar,
Villankuruchi Post,
Coimbatore 641085.

... Appellant

Versus

The Registrar of the Companies, Tamil Nadu
AGT Business Park, Avinashi Road,
Civil Aerodrome Post Coimbatore 641014.
Tamil Nadu

... Respondent

Present:

For Appellant: Mr. B. Karunakaran and Mr. Anoop Prakash
Awasthi, Advocates

For Respondent: Notice delivered - no appearance

JUDGEMENT

(Through virtual mode) (Date: 26.11.2020) {Per: Dr. Alok Srivastava, Member(T)}

1. This appeal has been preferred under Section 421 of the Companies Act, 2013 (hereinafter called the Act) against the order of the National Company Law Tribunal, Chennai Bench (called Company Appeal (AT) No. 171 of 2020 NCLT, Chennai Bench hereafter) in case CA/06/2020 delivered on 05.05.2020.

2. The case relates to the order of the Registrar of Companies, Tamil Nadu, Coimbatore striking off the name of the company M/S Shri Laxmi Spinners Private Limited from the Register of Companies vide order dated 29.8.2018, which was published for public notice under Section 248 (5) of the Act and Rule 9 of the Companies (Removal of names of companies from the Register of the Companies) Rules, 2016 on 31.8.2018. The appellant company thereafter filed an appeal against the said order before the National Company Law Tribunal, Chennai Bench which was duly heard and disposed off vide the aforesaid order of the NCLT, Chennai Bench on 05.05.2020.

3. The brief facts of the case are as under:-

(i) M/s. Shri Laxmi Spinners Private Limited was incorporated as a Company under the Companies Act, 1956 on 27.9.1978 and was carrying on business from its Registered Office at No. 55G, Ramasamy Naidu Nagar, Vilankuruchi Post, Coimbatore 641035 with CIN No.U17111TZ1978PTCo11945. The Company manufactures and deals in textile including ginning, Company Appeal (AT) No. 171 of 2020 spinning and related activities and cultivating, selling, buying fibre, yarn, cotton etc. as well as its trade, import and export.

(ii) The Appellant purchased the company in the year 2006 and is a Director on the Board of Directors of the Company. The Appellant has stated in the appeal memo that due to irregular power supply and manpower issues, enormous man hour and production possibility was lost resulting in huge losses for the Company and thus the production was stopped due to uncontrollable reasons.

(iii) The Appellant has further stated that in view of availability of regular electric power supply, it is now viable to run the yarn mill of the company and given the assets and infrastructure, restart of production is very much possible.

(iv) The Appellant has further stated that due to inadvertence and deficient professional advice, the Company has not filed the balance sheets and annual returns for some time and also missed the opportunity of getting the status of a dormant company under Section 455 of the Companies Act, 2013.

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(v) The Registrar of Companies Tamil Nadu, Coimbatore issued a show cause notice No. 248(1)0055322018 under Section 248 of the Act on 11.5.2018, proposing to strike off the name of the Company from the Register of Companies unless reasonable cause is shown within 30 days of the receipt of the show cause notice by the Appellant Company. According to the averment made by the appellant this notice was received by the company on 16.07.2018. The Company filed its reply dated 24.07.2018 to the Registrar of Companies Tamil Nadu, Coimbatore wherein it accepted that the Company was not functioning and the required balance sheets and annual reports were also not filed by the Company for the previous four years. The Company's name was struck off from the Register of Companies on 29.8.2018 and a Public Notice No.STK-7/ROCCBE/2018/2 in Form STK-7 was published on 31.8.2018 wherein the name of the Company appears at serial No. 31 in the list. This striking off the name of the Company from the Register of Companies was done pursuant to Section 248(5) of the Act and Rule 9 of the Companies (Removal of Names of Company Appeal (AT) No. 171 of 2020 Companies from the Register of the Companies) Rules, 2016.

(vi) As the striking off the name of the Company was not in the interest of the Appellant Company, the Appellant filed an appeal before the NCLT, Chennai Bench under Section 252(3) of the Act on 6.5.2019. A report was obtained by the NCLT, Chennai Bench from the Registrar of Companies Tamil Nadu, Coimbatore and based on the averments made in the appeal and report of the Registrar of Companies Tamil Nadu, Coimbatore, the NCLT, Chennai bench dismissed the appeal no. CA/06/2020 on the ground that no business was being carried on at the time the notice was issued to the company and its name was struck off from the Register of Companies because no cogent reasons or documents were produced by the appellant before the NCLT, Chennai Bench to support the proposition that the company was carrying on its business. Aggrieved by this order of the NCLT, Chennai bench, the Appellant has preferred this appeal before the NCLAT.

4. The appellant has claimed in the appeal memo that the notice was actually issued on 22.06.2018 by the Registrar of Company Appeal (AT) No. 171 of 2020 Companies Tamil Nadu, Coimbatore, which was antedated to 11.05.2018. He has also stated that he submitted his reply to the Registrar of Companies Tamil Nadu on 24.7.2018, whereas the name of the Appellant Company was actually struck off from the Register of Companies on 6.7.2018, much before the Company's reply was submitted and could be considered by the Registrar of Companies Tamil Nadu, Coimbatore.

5. The Appellant Company's appeal filed before NCLT, Chennai Bench was perused to see whether the appellant had raised the issue of antedating of the notice and issuing of order to strike off the name of the Company before expiry of 30 days from the date of receipt of notice before the NCLT, Chennai bench. It is clear from a perusal of the appeal memo filed before the NCLT, Chennai Bench that the Appellant has nowhere raised the issue of the show cause notice actually being issued on 22.6.2018 and being antedated to 11.5.2018. Even before this Tribunal the Appellant has not brought any material to support his contention that the show cause notice was antedated to 11.5.2018. Therefore, it is now uncontroverted that the show cause notice under Section 248 of Act was issued by Registrar of Companies Tamil Nadu on 11.5.2018. As is clear from report submitted by the Registrar of Companies Tamil Nadu a further notice was issued on 6.7.2018 Company Appeal (AT) No. 171 of 2020 stating that no reply had been received from the Company and hence, it was proposed to strike off the name of the Company from the Register of the Companies. Thus, there is a gap of almost two months from the date of issue of notice and the date of the publication of notice on 6.7.2018 proposing to strike off the name of the Company. Thereafter, the final decision about striking off the name of the Company was taken on 29.8.2018, which was published as a public notice in Form No.STK-7 (Public Notice No.STK-7/ROCCBE/2018/2 dated 31.8.2018).

6. I have perused and considered averments of the appellant, the grounds stated in the appeal, order dated 05.05.2020 of NCLT, Chennai Bench in CA/06/2020, appeal memo filed before the NCLT dated 6.5.2019, the show cause notice issued by Registrar of Companies Tamil Nadu, Coimbatore and the reply thereon dated 24.7.2018. It is useful to reproduce the relevant Section 248 (1) of the Act to aid our analysis of case -

"248. Power of Registrar to remove name of company from register of companies - (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] Company Appeal (AT) No. 171 of 2020 [***]

(c) 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; or

(d) the subscribers to the memorandum have not paid the subscription which they had undertaken to pay at the time of incorporation of a company and a declaration to this effect has not been filed within one hundred and eighty days of its incorporation under sub-section (1) of section 10-A; or

(e) the company is not carrying on any business or operations, as revealed after the physical verification carried out under sub-section (9) of section 12, he shall 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."

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7. The Registrar of the Companies Tamil Nadu, Coimbatore has, on the basis of the fact that the Company was not carrying on any business or operation for the period of two financial years immediately preceding the year in which notice was issued and that it had not made any application within such period for obtaining the status of the dormant company under Section 455 of the Act, sent a notice to the Company as well as the Directors of the Company of the intention to remove the name of the Company from the Register of Companies. The notice was issued under Section 248(1) (c) and necessary action regarding issue of notice, obtaining representation along with copies of relevant documents within 30 days from the date of notice was done in accordance with provision in law.

8. Therefore, there appears to be no illegality or legal deficiency regarding following of the scheme and time frame as stipulated in Section 248 of the Act by the Registrar of Companies.

9. Regarding the matter whether the company was in business or operating on the date of issue of notice and two years immediately preceding the date of notice, it is seen that the Appellant has accepted in his reply dated 24.7.2018 submitted on behalf of the company before the Registrar of Companies Tamil Nadu that it was not functioning on the date the notice was issued and was also not functioning for two Financial Years immediately preceding the date of notice. He has very unequivocally admitted that due to unfavourable market conditions and technical difficulties in the recent years, they have faced some issues leading to a lot of financial issues for the company. This resulted in a phase where the company had no operations and all the activities of the company were put to a halt and therefore, the company did not have any significant business activities in the past few years. He has also admitted that he was facing personal health issues which inhibited him from fulfilling the activities of the company involving corporate compliances. The appellant has filed Income Tax Returns of the company for the Assessment Years 2014-15, 2015-16, 2016-17 and 2017-18, where the gross total income in each of the four Assessment Years mentioned has been disclosed as 'Nil' and the tax paid also is also shown as 'Nil' respectively. Thus it is amply clear that the Company was not doing any business from the Assessment Year 2014-15 till Assessment Year 2017-18 and also on the date of issue of notice by the ROC Tamil Nadu. In addition, it is also noted that the Company did not file any balance sheets or annual returns as required under the Company Appeal (AT) No. 171 of 2020 Companies Act, 2013 for the above mentioned periods as is required under law.

10. In view of the fact that the appellant has made categorical admission in reply submitted to the ROC and also before the NCLT Chennai Bench in the appeal memo that the company was not functioning and operational on the date the first notice was issued by the ROC Tamil Nadu, and also in the four assessment years preceding the date of notice it stands to reason that the company was a non-functional company when the notice was issued under Section 248(1) (c) of the Companies Act, 2016.

11. Now let us examine the requirement of Section 252 (3) of the Companies Act, 2016 insofar as grant of relief to the appellant is concerned. The Section 252 (3) of the Act is reproduced below for

better appreciation:

"252. Appeal to Tribunal. -

..... (3) If a company, or any member or creditor or workmen 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 Company Appeal (AT) No. 171 of 2020 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."

12. I will pause here for a moment to examine whether any of the conditions given in Section 252 (3) can provide a lease of life to the company in appeal. It is an admitted and undisputed fact that the said company was neither in business or in operation or functioning on the date the first notice was issued by the ROC, and also for two Assessment Years immediately preceding the date of issue of notice. Now let me see whether any case could be made out for the reason 'it is otherwise just' for restoring the name of the company in the register of companies. Fairness and Justice go hand in hand and so we must weigh the requirement of being just from the lens of fairness and justice based on the reasons put forth Company Appeal (AT) No. 171 of 2020 by the appellant. I find that the appellant has not given any cogent or convincing reason as to why the company was not in operation and the reasons provided by him about lack of electric supply and available manpower and poor market conditions are not convincing when we know that many other companies having similar businesses and production were functioning in the said time period. Moreover, the appellant failed to take any action to acquire the status of 'Dormant Company' by resorting to action under Section 455 of the Act. In addition, the company did not even care to file necessary balance sheets and annual returns for any of the financial years in question. The entire conduct of the directors of the company point to a situation that the company was not operational and the directors were not interested in running the company and take action as required under law. Thus I do not find any cogent reason preferred by the appellant that could be considered as providing 'just' ground for restoring the name of the company in the register of companies.

13. It is also worth noting that the ROC Tamil Nadu has taken action for striking off the names of non-functional and non- operational companies from the register of companies and keep it free of the names of defunct companies as part of his administrative functions. This action, it should be underlined, has Company Appeal (AT) No. 171 of 2020 been taken by following the stipulated legal procedure and by application of relevant provisions of the Companies Act, 2016 and not in any

arbitrary manner.

14. From the report of the Registrar of Companies Tamil Nadu, Coimbatore submitted to NCLT, Chennai Bench, it is seen that a submission has been made in paragraph 11.8 that Registrar of Companies Tamil Nadu, Coimbatore has no objection in restoring the name of the Company back to the Register of Companies, if the NCLT, Chennai Bench were to so order and the Company shall file pending financial statements and annual returns for the Financial years 2014-15 to 2019-20 with fees and additional fees as prescribed in the Act. The NCLT, Chennai Bench has considered the report of the Registrar of the Companies and the averments made by the Appellant before giving decision on the appeal. What can be made out of such a mention by the ROC is that he has merely stated a provision of law without giving any cogent or satisfactory reason for restoration of the name of the company in the register of companies. Hence we do not see much substance and reason in the mention of the Para 11.8 in the ROC's report.

15. In view of the legal provision in Section 248 of the Act (supra), the Registrar of the Companies has taken the step of striking off the name of the Company from the Register of the Companies as Company Appeal (AT) No. 171 of 2020 the Company does not comply with the requirements of Section 248 of the Act by following the procedure as laid down in law. Moreover, the appellant has not raised any issue about lack of legality in issue of notice and providing stipulated time for filing his reply by the ROC Tamil Nadu. The point about antedating of the notice to 11.05.2018 was neither raised before the NCLT Chennai nor any document or evidence was put forward in support of the appellant's contention. Hence the issue of antedating of the first notice and the legality of following the stipulated procedure by the ROC before striking off the name of the company does not hold water and no relief can be granted to the appellant on this account.

16. On the basis of the detailed analysis and discussion in the aforesaid paragraphs, it is succinctly clear that Registrar of Companies Tamil Nadu, Coimbatore has acted in pursuance of the provisions of Section 248 of the Companies Act, 2013. He has complied with the procedural requirements as outlined in Section 248(1) of the Act and therefore his action of striking off the name of the Company M/s. Shri Laxmi Spinners Private Limited from the Register of Companies has full force of law. Moreover the appellant has not been able to make out a case in his favour as to why it would be 'just' to restore the name of his company in the register of Company Appeal (AT) No. 171 of 2020 companies in accordance with the provision of Section 252 (3) of the Companies Act, 2013. The decision of NCLT, Chennai Bench in dismissing the appeal is, therefore, correct. I, therefore, find no reason to interfere with the order of the NCLT, Chennai Bench and the appeal is consequently dismissed. There is no order as to costs.

(Dr. Alok Srivastava) Member (Technical) New Delhi 26th November, 2020 /aks/ Company Appeal (AT) No. 171 of 2020 NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI Company Appeal (AT) No. 171 of 2020 [Arising out of Order dated 05.05.2020 passed by the National Company Law Tribunal, Division Bench-I, Chennai in CA/6/2020] IN THE MATTER OF:

R Narayanasamy 55 G, Ramasamy Naidu Nagar, Vilankuruchi Post, Coimbatore
641085. ...Appellant Versus The Registrar of the Companies, Tamil Nadu AGT

Business Park, Avinashi Road Civil Aerodrome Post Coimbatore Tamilnadu 641014
...Respondent Present:

For Appellant: Ms. Hema Sampath, Sr. Advocate along with Mr. B. Karunakaran & Mr. Ashok Kumar, Advocates For Respondent: Notice delivered - no appearance J U D G M E N T Venugopal M. J I have gone through the detailed judgement authored by my Learned Brother Dr. Alok Srivastava, Member (Technical). However, with great Company Appeal (AT) No. 171 of 2020 respect, I differ with the views expressed therein. Hence, I pen my thoughts and render my findings separately.

2. According to the Appellant he is a shareholder and Managing Director of the Company viz. 'Shri Laxmi Spinners Private Limited' incorporated under the Companies Act, 2013 with certificate of incorporation No. 7607 of 1978 dated 27.09.1978 with the Respondent / 'Registrar of Companies', Tamilnadu. In fact, the said Company is a Private Limited Company limited by shares doing business from its registered office at No. 55G, Ramasamy Naidu Nagar, Vilankuruchipost, Coimbatore, 641035.

3. The main objective for which the Company was incorporated are to manufacture and deal in textile including ginning, spinning and related activities and cultivating, selling, buying fiber, yarn, cotton etc. as well as its trade, export and import. The authorised Share Capital of the Company has been Rs. 10,00,00,000/- (Rupees ten crores only) divided into 156,000 /-

equity shares and that the issued, subscribed and paid up capital of the Company is Rs. 2,78,10,000/-(Rupees Two Crores Seventy-Eight Lakhs and Ten Thousand only) divided into 7,80,100 equity shares of Rs. 10/- only. The Appellant purchased the Company in the year 2006.

4. It is the stand of the Appellant that they are interested to run the Company business and a sum of Rs. ten crores were invested in the Company and that the factory is situated at a piece of land of 5.6 acres and built up area is about 17,000 sq. ft. which is a valuable asset. In fact, the Company's Company Appeal (AT) No. 171 of 2020 operations were stopped due to abnormal frequent power cuts in the State of Tamilnadu at the relevant time. Due to power issues, enormous man power and production possibility was lost resulting in huge losses for the Company and thus the production was stopped due to uncontrollable reasons.

5. It is the version of the Appellant that given the improvement of the position of electric power supply, now it is viable to run the yarn mill of the Company and given the assets and infrastructure and restart of production is much possible. The intention of the Directors is in continuing the operations and they have taken steps to that effect and during the period since the Company's name is struck off from the register of the 'Registrar of the Companies' they were clearing the EPF Bills, peak hour charges to the Electricity Board and continuing with proper representation in the Court / Legal cases by and against the Company. Further, two of the Directors of the struck off Company who were non-resident Indians had come back and ready to take up the Company business further.

6. The stand of the Appellant in the present Appeal is that due to inadvertence and deficient professional advise the Company had not filed the 'Balance Sheet' and 'Annual Returns' for some time and also missed the opportunity of obtaining the status of a dormant company under section 455 of the Companies Act, 2013. Furthermore, they were made ready in due course and could not be filed as the name of the Company was struck off.

Company Appeal (AT) No. 171 of 2020 The moment Company's name is restored to the register of the 'Registrar of Companies' appropriate statutory compliances would be done at the earliest.

7. The real grievance of the Appellant is that on 31.08.2018, in form no. STK-7, a notice of striking off and dissolution pursuant to sub-section 5 of Section 248 of the Companies Act, 2013 and Rule 9 of the Companies (removal of names of companies from the register of companies) Rules, 2016 was published vide Notice No. STK-7/ROCCBE/2018/2 wherein in the list enclosed the Appellant's was shown at S.No. 31 and that the strike off date was shown as 29.08.2018.

8. The Appellant in Appeal has taken a ground that the impugned order of the 'National Company Law Tribunal', Division Bench-I, Chennai in CA/6/2020 dated 05.05.2020 is prejudicial to the business of the Company.

9. The other ground of the Appellant is that the action of the 'Registrar of Companies' while striking out the name of the Company from the register was not compliant to the Section 248(6) of the Companies Act, 2013. Moreover, the first Appeal for restoration of Company's name in the register of the 'Registrar of Companies' was filed within three years period as per Section 252 of the Companies Act.

10. The Appellant in the instant Appeal filed before this Tribunal has averred that the position of power supply has improved and that the Company is optimistic of carrying out operations and that the Company has Assets and Company Appeal (AT) No. 171 of 2020 ready infrastructure to start its operations. Besides these, the plea of the Appellant is that the present case on hand falls in the category where it would be 'just that the name of the Company be restored to the register of companies' as per section 252(3) of the Companies Act, 2013.

11. The Appellant in Appeal has comes out with a plea that great prejudice would be caused to the Appellant if the name of the Company of the Appellant is not restored to the register of the Registrar of Companies and on the other hand no prejudice would be caused to anyone if the restoration of the name of the Company is ordered by this Tribunal, in the interest of justice.

12. It transpires that the Respondent / Registrar of Companies, Tamilnadu, Coimbatore had issued a notice dated 11.05.2018 for removal of name of 'Shri Laxmi Spinners Private Ltd.' from the register of companies under Section 248(1)&(2) of the Companies Act, 2013 to the Company, on the ground that the Company was not carrying on any business or operation for a period of two immediately preceding financial years and had not made any application within such period for obtaining the status of a dormant company under Section 455 of the Companies Act, 2013. In fact, the Respondent / Registrar of Companies, Tamilnadu, Coimbatore had sought the representation of the Company

along with copies of relevant documents, if any, within 30 days from the date of receipt of the said notice and that a copy of the notice was marked to four Directors of the Company mentioned in the notice.

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13. In the Appeal paper book of the Appellant the reply of the Appellant dated 24.07.2018 representing as Managing Director of the 'Shri Laxmi Spinners Private Ltd.', Coimbatore addressed to the Respondent / Registrar of Companies, Tamilnadu, Coimbatore is shown as Annexure A-9 wherein it was mentioned that the notice of the Respondent was received by the Appellant on 16.07.2018 and that due to unfavourable market condition and technical difficulties in the recent years, they had faced some issues leading to a lot of financial losses for the Company which had resulted in a phase where the Company had no operations and all the activities of the Company were put to a halt and added further the Company was not having any significant business activities in the past few years etc.

14. It comes to be known that the Respondent / Registrar of Companies, Tamilnadu, Coimbatore on 31.08.2018 in notice no. STK- 7/ROCCBE/2018/2 had published pursuant 7/ROCCBE/2018/2 had published pursuant to sub-section (5) of Section 248 of the Companies Act, 2013 the names of 962 Companies as per annexure-A which were struck off from the register of companies and the said companies were dissolved. Indeed, in the annexure A to the notice of striking off and dissolution dated 31.08.2018 at S.No. 31 the name of the Company 'Shri Laxmi Spinners Private Ltd.' is seen.

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15. The 'National Company Law Tribunal', Division Bench-I, Chennai in CA/6/2020 while passing the impugned order dated 05.05.2020 at paragraph 9 to 10 had observed the following: -

"9. As to the submissions made by the Ld. Counsel for the Applicant Company, it is seen from the records, that the company is not carrying on business, as on the date of striking off the company from the register maintained by the Respondent. Further, it may be seen from the records that the company was incorporated on 27.09.1978 and it is also brought to the notice of this Tribunal that the Applicant company has failed to file its balance sheet since its incorporation.

10. Upon perusal of the income tax acknowledgement which is filed along with the petition, would prove the fact that even though the company has been active during Company Appeal (AT) No. 171 of 2020 the period under scrutiny filing returns with income tax, however, had failed to file the same with the Respondent of any statutory returns from the documents submitted by the Appellant, it is evident upon its bare perusal which would prove that the company was not doing any business and remains to be dormant. Further at para 4.16 of the application, the applicant company has listed out the details of the Income Tax and the amount of Tax Paid from the assessment year 2013-14 and the details of which are as follows: -

S.No. Assessment Gross Total Tax Year Income Paid 1 2013-14 Nil Nil 2 2014-15 Nil Nil 3 2015-16 Nil Nil 4 2016-17 Nil Nil 5 2017-18 Nil Nil Company Appeal (AT) No. 171 of 2020

11. Thus, after conscientious perusal of the documents filed by the Applicant company, this Tribunal is satisfied that the Applicant company is not carrying on its business during the time when the company was struck off from the Register maintained by the Respondent and also no cogent reasons or any documents are produced before this Tribunal in order to substantiate that the company was carrying on its business or it is just to revive / restore the name of the company to the Register as maintained by the Respondent."

and ultimately was constrained to dismiss the application without costs.

16. Be it noted that a mere running of the eye of Section 252(1) of the Companies Act, 2013 shows that any person aggrieved by the order of the Registrar, notifying a company as dissolved under section 248 is competent to file an 'Appeal' to the 'National Company Law Tribunal'. If a company or any member or creditor feels aggrieved, they would also be competent to file an 'Appeal' against the order of the Registrar of Companies before the expiry of twenty years from the date of publication of order in the Official Gazette as per Company Appeal (AT) No. 171 of 2020 Section 252(3) of the Companies Act, 2013. In short, Section 252(3) of the Companies Act, 2013 visualises that one of the three conditions are required to be fulfilled before exercising jurisdiction to restore a company to the register of companies on the file of the Registrar of Companies. (i) That the company at the time of its name was struck off was carrying on business (ii) or it was in operation

(iii) or it is otherwise just that the name of the company be restored on the register.

17. Section 248(6) of the Companies Act, 2013 provides that the Registrar, before passing an order under sub-Section (5), shall satisfy himself that sufficient provision has been made for realisation of all amount due to the Company and for the payment or discharge of its liabilities and obligations by the Company and for the payment or discharge of its liabilities and obligations of the Company within a reasonable time and if necessary obtain undertakings from the managing director, director or other persons in charge of the management of the Company. This provision is subject to the proviso that notwithstanding the undertakings referred to in this Section, the assets of the Company shall be made available for the payment or discharge of all its liabilities etc. even after the date of order removing the name of the Company from the register of Companies.

18. At this juncture, it is pointed out that in the decision of Hon'ble High Court of Madras 'M.A. Rahim and Anr.' V. 'Sayari Bai' (DB) reported in (MANU/TN/0218/1973) it is held that the word 'just' connotes 'reasonableness' Company Appeal (AT) No. 171 of 2020 and something conforming to 'rectitude' and justice, something equitable and fair.

19. Moreover, in the decision of Hon'ble Supreme Court 'Helen C. Rebella' V. 'Maharashtra S.R.T.C.' reported in (1999) 1 SCC at page 90 it is observed that the word "just" denotes equitability, fairness

and reasonableness having a large peripheral field. In understanding its scope, one must take into account all the facts and circumstances of the case and then decide what would be just and equitable.

20. In the decision 'Sidhant Garg and Anr.' V. 'Registrar of Companies and Ors.' reported in (2012) 171 Comp.Cas. 326 it is held that the word "just" would mean that it is fair and prudent from a commercial point of view to restore the Company and that the Court has to examine the concept of 'justness' not exclusively from the perspective of a creditor or a member or a debtor but from the perspective of the society as a whole.

21. In the decision of Hon'ble High Court of Delhi 'M.A. Panjwani' V. 'Registrar of Companies and Ors.' reported in (2015) 124 CLA 109(Delhi) in paragraph 16 it is observed as under:-

"16. It was submitted on behalf of the Registrar of Companies that in striking off the name of the Company, the Company Appeal (AT) No. 171 of 2020 procedure prescribed in Section 560 of the Act was followed. That may be so. Sub-section 6 of Section 560 gives power to the company court to order restoration of the name of the company if it finds that such of course was 'just'. The fact that the ROC did follow the due procedure prescribed by law while striking off the name cannot, therefore, be an answer to a petition filed on the ground that it would be 'just' to restore the name of the company."

22. In the decision 'Purushottam Dass' V. 'Registrar of Companies', Maharashtra, (1986) 60 CompCas 154 (Bom) it is observed as under:-

"The object of Section 560(6) 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 Company Appeal (AT) No. 171 of 2020 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."

23. In the decision Hon'ble High Court of Delhi 'Ascot Shoes Private Limited' V. 'Registrar of Companies' reported in (2017) 2 CompLJ118(Del) wherein at paragraph 12 it is interalia observed as follows:

"12.....Looking to the fact that the petitioner is stated to be a running company; and that it has filed this petition within the stipulated limitation period, and to the decision of the Bombay High Court in Purushottamdass and Anr.(Bulakidas Mohta Co. P. Ltd.) v. Registrar of Companies, Maharashta & Ors. (supra); it is only proper that the impugned Company Appeal (AT) No. 171 of 2020 order of the respondent dated 23.06.2007 which struck off the name of the petitioner from the Register of Companies, be set aside. At the same time, however, there is no gainsaying the fact that a greater degree of care was certainly required from the petitioner Company in

ensuring statutory compliances. Looking to the fact that annual returns and balance sheet were not filed for almost fourteen years, the primary responsibility for ensuring that proper returns and other statutory documents are filed in terms of the statute and the rules, remains that of the management."

24. In the decision 'Mace Platronics Pvt. Ltd. V. ROC, reported in (2010) 104 SCL 277(Del), wherein it is observed as under:-

"When the name of the company was struck off after Company Appeal (AT) No. 171 of 2020 following the prescribed procedure for non-filing of statutory records, even though the contentions of the company that the officials entrusted with responsibility of filing documents had failed to do so cannot be accepted, yet since the company was a running company and the application had been filed in time, the court had power to restore the name of the company."

25. It is to be remembered that the right to seek restoration of a name of a company to the register of companies maintained by the 'Registrar of Companies' is not lost as long as 20 years have not expired. A 'Creditor' in Section 252 of the Companies Act ought to be construed widely so as to include a 'creditor' whose debt was contingent or prospective. In restoring a company to the register of companies, the court has no jurisdiction to impose any penalty for the defaults under the Act, but may order costs as a term of restoration as per decision 'Re Moses and Cohens Ltd. reported in (1957) 3 All ER p.425.

26. It is pointed out that instead of resorting to prosecution of Directors and Officers of the Company, many times striking off the names of Companies are seen based on the reason that the Company had not filed the 'Returns and Accounts'.

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27. Section 455 of the Companies Act, 2013 speaks of 'Dormant Company'. As a matter of fact, the word dormant is not defined in the Act. The term 'dormant' in business vernacular means inactive, passive, an entity the identity which is unknown to others. A company may apply for obtaining the status of a dormant company by passing a special resolution at the general meeting of the company or by obtaining consent of the shareholders holding atleast three-fourth of the Shares in value.

28. A dissolved company has no legal existence and, therefore, it cannot carry on business operations in accordance with the objects clause or Memorandum of Articles of Association. The effect of dissolution is that the certificate of incorporation issued to the Company is deemed to be cancelled from the date of dissolution.

29. In Law, the dissolution of a Company will not culminate in removing the 'Debtors' liability of the Company for the purpose of discharging the dissolved Company's obligations / payments / liabilities it can carry on its operations.

30. Even though the Company at the time of striking off its name from the register of Companies was not carrying on business or not in operation yet, if the claim is bonafide / genuine or fair one, the Tribunal can restore the striking off the name of the Company. Although, when the name of the Company was struck off at the instance of Applicants itself, yet the Company can seek restoration of name under Section 560 of the Companies Act, 1956 (corresponding to Section 248 of the Companies Act) as per decision of Hon'ble Company Appeal (AT) No. 171 of 2020 High Court of Delhi in 'Intec Corporation P. Ltd.' V. 'Registrar of Companies' (2017) 201 Comp cases 18 (Delhi).

31. The 'Striking off' is an alternative to 'winding up'. Further, the order of restoration of the name of a Company to the register of Companies can also be passed by the Tribunal if it is that, it is just and proper to restore the name of the Company, then refusal to grant relief because some third party might be inconvenienced by it, will not be a proper, in my considered opinion.

32. It is to be borne in mind that the presence of the words 'or otherwise' signifies that even if the Company was not carrying on any business or was not in operation at the time of striking off, it is still open to the Tribunal to order restoration if it appears to it to be 'otherwise' 'just'.

33. In case of an order being passed by the Tribunal restoring the Company to the register of 'Registrar of Companies' as regards the claims of creditors which were not barred on the date of dissolution that period between the date of dissolution and the date of restoration is not to be counted for the purpose of limitation Act.

34. In the instant case on hand, the reasons assigned by the Appellant that due to inadvertence and deficient professional advice the Company had not filed the 'Balance Sheets' and 'Annual Returns' for some time, the Consultant who was entrusted with the filing of 'Returns', had no knowledge of Company Law requirements and that there was no proper superintendence to ensure that the statutory filings were completed within the time period are not acceded to by this Tribunal.

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35. The Appellant in his application filed in the form of an affidavit before the Tribunal (under Section 252(3) of the Companies Act and Rule 87A of 'National Company Law Tribunal Rules, 2016) for restoration of 'Shri Laxmi Spinners Private Limited' to the register of Companies at paragraph 4.21 had averred that there are some legal cases and furnished the pending cases details as under:-

"4.21 (i) W.P.(MD) No. 14790 of 2017 and subsequent W.A.(MD)No. 1161 & 1162 of 2018 Domestic Enquiries were conducted against a worker P.Solaiyapan for his having deliberately omitted to tie the yarn and caused production loss to the mill and against another worker M.Sankarapandian for his having attacked a co worker causing severe injury to deter him from attending the work of the mill regarding which the said Sankarapandian was also arrested by the police on registration of a criminal case. The charges against the said workers were held Company Appeal (AT) No. 171 of 2020 proved and hence they were dismissed from service. They had approached the Hon'ble Labour Court Madurai wherein the findings arrived at in the

Domestic Enquiry was upheld but orders were passed directing the Mill to reinstate them without back wages. Later the Hon'ble Labour Court allowed the claim petitioners filed by the said 2 workers alleging that they were not reinstated. Challenging the same the Mill unsuccessfully filed W.P. (MD) Nos. 14790 and 14791 of 2017 and then WA (MD) Nos. 1161 and 1162 of 2018 on the file of the Hon'ble Madurai Bench of Madras High Court. The company has to pursue the above said Writ Appeals.

(ii) TANGEDCO(TNEB) is claiming Rs.

7,01,868/- and the case is going on.

Last hearing was on 19.01.19.

Company Appeal (AT) No. 171 of 2020 Waiting for further calls from TNEB Redressal forum. The company has to pursue the above for the hearings.

(iii) The Regional Provident Commissioner, / Assistant Provident Fund Commissioner, Madurai had filed W.P. (MD)No. 9237 of 2010 and MP (MD) No. 2 of 2010 in Hon'ble Madurai Bench of Madras High Court.

The company has to pursue the above and settle with the EPF."

36. The Respondent / Registrar of Companies, Tamilnadu, Coimbatore in his report filed before the 'National Company Law Tribunal', Division Bench-I, Chennai to the application No. CA/06/2020 had among other things mentioned that the Company had defaulted in filing its statutory returns since 2015 and for the notice issued u/s 248(1) of the Companies Act, 2013 in STK-5 to the Company and its Directors on 11.05.2018, no reply was received from the Company and its Directors and hence that the Company was struck off u/s 248(5) of the Companies Act.

37. Continuing further, the Respondent / Registrar of Companies, Tamilnadu, Coimbatore in his Report filed by the 'National Company Law Tribunal', Division Bench-I, Chennai had submitted that he had no objection in restoring the name Company Appeal (AT) No. 171 of 2020 of the Company back to the register of Companies subject to the conditions mentioned therein.

38. It is relevantly pointed out that the liability u/s 92 of the Companies Act, 2013 is that even defunct company, like every other Company is under an obligation to file the statutory 'Annual Return' till it is wound up or till such time the Company is struck off by the Registrar u/s 248 of the Companies Act, 2013.

39. Be that as it may, on a careful consideration of respective contentions, on going through the impugned order of the 'National Company Law Tribunal', Chennai Bench in CA/06/2020 dated 05.05.2020 even though the Appellant / Applicant's Company 'Shri Laxmi Spinners Private Limited' was not carrying on its business during the time when the Company was struck off from the register

maintained by the Respondent, taking note of the primordial fact that the Appellant in his application in CA/06/2020 before the Tribunal at paragraph 4.21 had referred to the pending legal cases, the claim made by TANGEDCO (TNEB) The Regional Provident Fund Commissioner / Assistant Provident Fund Commissioner, Madurai (vide paragraph 35 Supra), the same being pursued by the Company and especially bearing in mind that the right to seek restoration of name of the Company to be entered in the register of Companies is not lost as long as 20 years have not expired, I am of the considered opinion that in all reasonableness, fairness and on equitableness, it is just and proper to restore the name of the Company and that the lapses / failure on the part of the management of the company in not filing the 'Annual Returns' and 'Financial Statements' in Company Appeal (AT) No. 171 of 2020 time can be saddled with an imposition of costs. Otherwise, it will cause prejudice and hardship to the Company. However, the contra view taken by the 'National Company Law Tribunal', Division Bench-I, Chennai in the impugned order of CA/06/2020 dated 05.05.2020 is incorrect in the eye of Law. Viewed in that perspective, the Appeal succeeds.

40. In fine, the instant Appeal is allowed. No Costs. The impugned order dated 05.05.2020 in CA/06/2020 of the 'National Company Law Tribunal', Chennai Bench is set aside. The CA/06/2020 filed by the Appellant before the 'National Company Law Tribunal', Division Bench-I, Chennai is allowed. The notice of striking off and dissolution in form No. STK-7 dated 31.08.2018 issued by the Respondent / Registrar of Companies, Tamilnadu, Coimbatore striking the name of 'Shri Laxmi Spinners Private Limited'(Company) at S.No. 31 is set aside. It is lucidly made clear that the restoration of the name of the Company 'Shri Laxmi Spinners Private Limited' is subject to its filing of all outstanding documents required by Law and completion of all statutory formalities, including payment of any late fee or any other charges which are leviable by the Respondent for late filing of statutory returns and also on payment of cost of Rs. 35,000/- (Rupees thirty-five thousand only) to be paid to the Prime Minister's Relief Fund. The name of the Appellant / Applicant's Company shall then, as a consequence, shall stand restored to the Register of the 'Registrar of Companies', as if the name of the Company had not been struck off in accordance with Section 248(5) of the Companies Act, 2013.

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41. I.A. No. 2455/2020 is closed with a direction that the Appellant is to file the certified copy of the order of 'National Company Law Tribunal', Division Bench-I, Chennai dated 05.05.2020 in CA/06/2020 within two weeks from today.

[Justice Venugopal. M] Member (Judicial) NEW DELHI 26th November, 2020 ss Company Appeal (AT) No. 171 of 2020