

NATIONAL COMPANY LAW APPELLATE TRIBUNAL

NEW DELHI

Company Appeal (AT) No. 300 of 2019

IN THE MATTER OF:

TWEAK THE FUTURE INNOVATIONS PRIVATE LIMITED ...Appellant

Versus

REGISTRAR OF COMPANIES, PUNJAB & CHANDIGARH ...Respondent

Present:

For Appellant : Mr. Karanveer Jindal and Mr. Nitin Kumar, Advocates for the Appellant.

For Respondent : Mr. P.S Singh with Mr.Vaibhav Singh, Advocates for ROC.

J U D G M E N T

(03rd March, 2020)

Dr. Ashok Kumar Mishra, Technical Member

1. That the instant Appeal filed under Section 421 (1) of the Companies Act, 2013 against the impugned/final order in *CA No. 04/CHD 2019* dated 05.09.2019 passed by the National Company Law Tribunal, Bench at Chandigarh (NCLT) is an appeal for revival of the Appellant Company under section 252 of the Companies Act, 2013. NCLT has dismissed the Appeal of the Appellant Company for revival of the Appellant Company.

Brief fact of the case:

2. The Appellant company i.e. M/s Tweak the Future Innovations Private Limited was incorporated under the Companies Act, 1956 on 22.02.2011 vide CIN: U72900CH2011PTC032760, as a Private company limited by shares and the same is registered with the office of Registrar of Companies, Punjab & Chandigarh. The applicant company has its registered office address HNO. 3380; Sector 15D, Chandigarh-160015. The company is carrying on the business of development of software and main object of the company are as under:

I. “To Develop, create, innovative, software program /technologies and futuristic system/solution to Tweak (fine-tune) the way and to constantly conceptualize and design products/solution using futuristic technologies/innovations etc”.

3. The Applicant Company is a closely held company and there are only (two) Shareholder and 2 (two) directors in the Applicant company. The list of director and shareholder is as under:-

LIST OF DIRECTORS

SR. No	Name of Director	Date of appointment	DIN
1.	Sh.Ramesh Chand Gupta	30.01.2015	07068904
2.	Smt. Sonia Bansal	30.01.2015	07068901

LIST OF SHAREHOLDERS

Sr No.	Name of shareholder and Address	No. mof Equity shares of Rs.10/- each	Percentage of shareholding
1.	Sh.Ramesh Chand Gupta	5,000	50%
2.	Smt. Sonia Bansal	5,000	50%
	Total	10,000	100%

4. That the Authorized Share Capital of the Applicant Company is Rs. 5,00,000/- (Rupees Five Lakh Only) divided into 50,000 (Fifty Thousand) equity share of Rs. 10/- (Rupees Ten Only) each. The issued, subscribed and paid share capital of the company Rs. 1,00,000/- (Rupees One Lakh) divided into 10,000 (Ten Thousand) equity shares of Rs. 10/- (Rupees Ten Only) each.
5. The contention of the Appellant is that the Appellant Company commenced its business and operation since the date of the incorporation of the company and company is continuing to carry out its business and operation till date and the Respondent i.e. Registrar of Company has not given any prior notice to the Appellant Company, ordered to publish the information regarding the removal of name of the Appellant Company from the register of companies w.e.f 11th September, 2018 in official Gazette dated 15.09.2018 on the ground that that the Appellant Company had not filled the statutory documents with the Respondent i.e. Registrar of Companies and the Appellant Company had not filed its financial

statements and Annual returns for period from 2014-15, 2015-16-, 2016-17 for the last 3 years and believing that the company was not carrying on business or not in operation at time of strike off. The Appellant Company has filed its financial statement with Respondent till the year ended on 31.03.2017 on 25th September, 2018 by paying additional fee of Rs.73,800/- also the Appellant Company regularly convening its annual general meeting and approving & adopting the audited balance sheets and complying with other requirement of the Companies Act, 2013

6. It is submitted by the Appellant that the Appellant Company is consistent with the filing its Income Tax Returns after the accounts audited with the Department of Income Tax. They have also submitted that they have filed Income Tax Returns for the Financial Year 2014-15 & 2015-16 (AY 2015-15 & 2016-17) as on 23rd December, 2016.
7. It was also submitted that both Directors are Professionals. It is submitted by the Appellant that Memorandum of Understanding dated 9.04.2015 was executed by the Appellant Company with north Atlanta preschool, USA for providing a parent engagement and school management platform (software), offered by the Appellant Company, also another Memorandum of Understanding executed by the Appellant Company dated 06.05.2015 with Achievers Technology Private Limited for co-developing a software

named SoCo World . The said software is owned by the Appellant Company. These two Memorandum of Understanding clearly shows that the appellant company was carrying its operation before the striking off the name of the Appellant company i.e. before 11.09.2018.

- 8.** It is also submitted by the Appellant that the Respondent i.e. Registrar of Companies ordered to struck off the name of the Appellant Company from the Register of Companies w.e.f 11th September, 2018, whereas, the name of the Appellant Company was still retained in the records by the office of the respondent i.e. registrar of companies even after publication of the said notification and the same is evident from the fact that the Appellant company made filing of the pending statutory returns on 25.09.2018 and the Respondent i.e. Registrar of Companies issued notice dated 03.11.2018 to the Appellant Company to file its statutory return for the financial year 2017-2018.
- 9.** The Appellant further submits that the Respondent filed its reply in the matter and did not object to the revival of the Appellant Company as per Annexure-2 attached with the Applications.
- 10.** The Appellant further submits That the statutory returns for the year ended on 2015,2016 and 2017 were filed an 25.09.2018 with total additional fee of Rs. 73,800/-, E-form ADT-1 was filled on 01.10.2018 with

additional fee of Rs. 3,600/- and the invoices dated 21.10.2018, 22.10.2018, 01.11.2018, 06.11.2018, 06.12.2018, 13.02.2019 and 04.03.2019 were issued by the Appellant Company and was carrying on the business and operation even after the date of striking off the name of the Company i.e. after 11.09.2019

11. The Appellant has also submitted few invoices of 2018 for billing done for access and use of web and mobile platforms, annual subscriptions etc.

12.The Appellant sought following Relief:-

- a) Allow the present appeal and set aside the impugned/final order dated 05.09.2019 passed by the National Company Law Tribunal, Bench at Chandigarh in Appeal No.04/chd.CHD/2019
- b) To direct the respondent to restore the name of the appellant Company I.e. Tweak the futures private limited in the register of companies maintained by the Respondent
- c) Pass such other direction and make such provisions as deemed just for placing the name of the appellant company and its directors in the same position as nearly as may be as if the name of the appellant company had not been struck off from the register of companies.

- d) Set aside the notification published by the Respondents for striking off the name of the company to the extent the same is applicable to the appellant company
- e) Pass any other or further order or direction, which the Hon'ble Appellate tribunal may deem fit and proper in the facts and circumstances of the case in the interest of justice

13.It is submitted by the Respondent i.e. Registrar of Companies that the main issue raised by Hon'ble NCLT in its order dated 05.09.2019 is that the Appellant Company failed to show that on date of striking of the name of the company, whether it was carrying on business or operation or not. The conclusion drawn from the fact that at the time of issue of the gazette notification dated 15 September and 21 September, 2019 the Company had not filed its financial statement with the Respondent for 3 consecutive financial years i.e. from 2014-15 to 2016-2017.

14.It is further submitted by the Respondent i.e. Registrar of Companies that the tax returns filed by the Appellant Company with income tax Authority showed NIL income which strengthens the fact of non carrying of business or operation by the Company

15.It is also submitted by the Respondent i.e. Registrar of Companies that the Respondent has struck off the name of the Appellant Company after the following due process as laid down under provision of section 248 of the Companies Act

16.We have gone through the submissions made by both the parties and perused the documents on record. The Memorandum of Understanding dated 09.04.2015 and 06.05.2015 reveal that *the Appellant* is operational. The Appellant Company delayed filing of returns but have paid additional Fee of Rs.73,800 also e-form ADT-1 was filed on 01.10.2018 with additional fee of Rs.3,600/- for the delay caused. Hence, ROC notice dated 03.11.2018 to the company to file its statutory returns for financial year 2017-18 shows that the name of the company was still existing in the records of ROC even after the removal of name of the company. Section 252 (3) of Companies Act, 2013 reads as under:-

“252(3) - If 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.”

17. All the above reveals that the Appellant is in operation as they are entering into MOU's. The Directors are professionals and to develop an I.T platforms also takes considerable time; it is supplementing “Make in India” programme. No doubt, Company's business volume is too low but attempting to enter USA Market through MOU is a good sign. All this reflects that the Appellant is in operation. “Operation” in commercial sense means developing business platform also.

18. Hence, we are setting aside National Company Law Tribunal, Chandigarh Bench order and Registrar of Companies is directed to restore the name of the Company to the Register of Company.

19. The Appellant is directed to pay Rs.1,00,000/- (Rupees One Lakh) by way of Bank draft in favour of Pay & Account Officer, Ministry of Corporate

Affairs, Chandigarh/ New Delhi towards cost for not filing statutory documents as required under Companies Act, 2013.

20.We dispose off the application with above direction. No other prayer is allowed.

21.The copy of this Judgment be communicated to the Appellant, Income Tax Department and Registrar of Companies, Punjab & Chandigarh.

(Justice Jarat Kumar Jain)
Member (Judicial)

(Mr. Balvinder Singh)
Member (Technical)

(Dr. Ashok Kumar Mishra)
Member (Technical)

New Delhi

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