

\$~1

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

*Date of Decision: 28<sup>th</sup> February, 2023*

+ **W.P.(C) 4578/2021**

SPREAD INFOTECH CONSULTANTS PVT. LTD. .... Petitioner

Through: Mr. Vansh Gandotra, Advocate (M-9810821771) with Mr. Ravinder Singh Chauhan in person (virtually)

versus

MINISTRY OF CORPORATE AFFAIRS & ANR. ... Respondents

Through: Mr. Ajay Diggpaul, CGSC along with Mr. Kamal R. Diggpaul and Ms. Swati Kwatra, Advocates for UOI.

**CORAM:  
JUSTICE PRATHIBA M. SINGH**

**Prathiba M. Singh, J.(Oral)**

1. This hearing has been done through hybrid mode.
2. In this matter on 10th February, 2023, a short affidavit was directed to be filed by the Respondent within one week. The same is stated to have been filed on 24th February, 2023 by Mr. Diggpaul, Id. CGSC vide diary number 341041. However, the same is not on record.
3. It is noticed that in a large number of matters, the affidavit/other pleadings are filed by the parties. However, on the date when the matters are listed, for whatever reasons including the delay, the Registry does not put the same on record. It is directed that in order to avoid unnecessary adjournments in matters, the Registry shall place all the pleadings, which are filed prior to the said date of hearing, on record, even if the same is filed with delay. An office noting shall mention the period of delay, if any, so that

the Court can pass appropriate orders.

4. The present petition has been preferred by the Petitioner - Spread Infotech Consultants Pvt. Ltd. seeking directions to the Respondents to allow benefit of Companies Fresh Start Scheme (CFSS) in respect of overdue filings to the Petitioner who could not avail the benefit of filing under CFSS-2020 by 31st December, 2020.

5. The Petitioner company was incorporated on 3rd September, 2003 and filed its balance sheet for the year 2003-04. Admittedly, with effect from the year 2004-05, no balance sheets and documents were filed by the Petitioner. In view thereof, the Respondent No.2 – Registrar of Companies, NCT of Delhi & Haryana ( *hereinafter*, “ROC”) struck off the name of the Petitioner company under Section 248 (1) of the Companies Act, 2013 read with Rule 7 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016. The striking off of the company took place on 13th June, 2017.

6. The Petitioner was one of many companies, which was struck off due to non-filing of requisite documents and the DIN/DIRs of the directors were suspended.

7. Thereafter, steps were taken for the restoration of the company. The Petitioner company was restored vide order dated 27th February, 2019 passed by the NCLT. The operative portion of the said order reads as under:

*“13. Accordingly, this appeal is allowed. The Public Notice of Registrar of Companies striking the name of the company is set aside. The restoration of the company's name to the Register of Registrar, of Companies is ordered subject to its filing of all outstanding documents with proper filing fees along with additional fees required*

*under law and completion of all formalities, including payment of any late fee or any other charges which are leviable by the respondent for the late filing of statutory returns, and also subject to payment of cost of Rs.25,000/- to be paid to Prime Minister's Relief Fund. The name of the Appellant Company shall then, as a consequence, 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(1) of the Companies Act, 20.13. ”*

8. Since inception, the Petitioner had two directors namely Ms. Chandra Prabha and Mr. Ravinder Singh Chauhan. Since the DIN/DIR of Mr. Ravinder Singh Chauhan was deactivated/suspended, a writ petition was filed before this Court seeking restoration of the same. The said writ petition being **W.P.(C) 6886/2020** titled **Ravinder Singh Chauhan v. Ministry of Corporate Affairs & Anr.** was disposed of vide order dated 24th September, 2020 in the following terms:

*“The learned counsel for the petitioner submits that the case of the petitioner is covered by the judgment dated 04.11.2019 of this Court passed in W.P.(C) 908812018, titled Mukut Pathak & Ors. v. Union of India & Anr.*

*The learned counsel for the respondents, however, submits that the petition is liable to be dismissed on the ground of delay and laches.*

*I do not find any merit in the objection raised by the learned counsel for the respondents. A Coordinate Bench of this Court, in its judgment dated 02.09.2020 passed in WP(C) 549012020, titled Sandeep Agarwal & Anr. v. Union of India & Anr., has already rejected such submission.*

*In view of the above, the present petition is disposed of in terms of the aforesaid*

*judgment of this Court in W.P.(C) 908812018, titled Mukut Pathak & Ors. v. Union of India & Anr.”*

9. Accordingly, the DIN of the Mr. Ravinder Singh Chauhan was to be restored by the ROC. The Petitioner filed an application for restoration of the same on 23rd October, 2020. In the meantime, the CFSS was announced by the Ministry of Corporate Affairs on 30th March, 2020. The said scheme was in operation between 1st April, 2020 till 30th September, 2020. Vide order dated 28th September, 2020 passed by the Ministry of Corporate Affairs, the said scheme was extended till 31st December, 2020. The said extension order reads as under:

*“Subject: Extension of Companies Fresh Start Scheme, 2020.*

*Sir/Madam,*

*In continuation to this Ministry's General Circular No.12/2020 dated 30.03.2020, in view of the large scale disruption caused by the COVID-19 Pandemic and after due examination, it has been decided to extend aforesaid scheme till 31st December, 2020. All other requirements provided in the said circular shall remain unchanged.*

*2. This issues with the approval of the competent authority”*

As per the scheme, as a one-time opportunity defaulting company could submit all the documents by paying a nominal fee in accordance with the Companies (Registration Offices and Fee) Rules, 2014.

10. The DIN of Mr. Ravinder Singh Chauhan was finally restored on 6th January, 2021, after the last date of the CFSS Scheme viz., on 31st December, 2020. Thus, the Petitioner prays that since there was a delay in

the restoration of the DIN, by the ROC, which led to the Petitioner not being able to avail the CFSS. The filing of the documents could not be done during the currency of the CFSS. Thus, vide the present petition the Petitioner prays that the benefit of CFSS ought to be allowed for the Petitioner and delay in filing ought to be condoned.

11. Ld. counsel for the Petitioner has vehemently argued that various compliances were undertaken by the Petitioner, after the company was restored by filing of the documents relating to the years 2004-05 and 2005-06. However, insofar as the subsequent years i.e. 2006 onwards are concerned, since the DIN of the second director Mr. Ravinder Singh Chauhan was not restored, the filing of the balance sheets could not be done as the DIN was required of both directors. The delay in restoring the DIN is purely a delay by the ROC. Further, the Petitioner cannot be deprived of the CFSS.

12. On the other hand, Id. Counsel for the Respondents submits that the Petitioner company had two directors namely Mrs. Chandra Prabha and Mr. Ravinder Singh Chauhan till the year 2020. Thereafter, with effect from 2021, a third director i.e. Mr. Virender Singh Chauhan was also added. Ld. Counsel submits that the issue, in the present case is that the Petitioner was in default for several years and had not filed the documents. Various other documents including form DIR 12 etc. were submitted with digital signature of Mrs. Chandra Prabha, however, for whatever reasons, the balance sheet was not submitted. He further submits that the compliances in respect of 2004-05 and 2005-06 were undertaken by the company on 14th September, 2020 but for remaining years, the compliances were not undertaken. Finally, it is submitted that the CFSS is a scheme, which came to an end on 31st

December, 2020 and the benefits, if extended in this manner to companies, which do not comply and file the documents within the CFSS, would result in extension of benefits to various defaulting companies, which was not contemplated under the scheme.

13. The Court has considered the matter.

14. The first and the foremost fact that deserves to be highlighted is that after the Petitioner company was incorporated in the year 2003, only one Balance Sheet/ Annual Return was filed. There is no explanation whatsoever for non-filing of the documents and the balance sheets for more than a decade by the company. This led to the company being struck off and disqualification of the directors in 2017. The Petitioner has chosen to get the company restored only in 2019 and the DIN restored in September, 2020 after filing of a writ petition. If there was any delay in processing of the DIN restoration pursuant to the orders, which were passed by this Court in *W.P.(C) 6886/2020* titled *Ravinder Singh Chauhan v. Ministry of Corporate Affairs & Anr.*, the Petitioner ought to have availed of its remedies in accordance with law to ensure restoration of the DIN during the subsistence of CFSS. The Petitioner cannot be seen as being recalcitrant in its filing of documents and forms and choose to seek extension of benefits of CFSS, which is merely an alleviating measure. The said Scheme starts by saying that the alleviating measure has been introduced by the government primarily in view of the COVID-19 pandemic and was extended in view of the same.

15. The Petitioner has been a consistent defaulter in filing the documents and forms including the balance sheets for over several years. Thus, the CFSS cannot be extended in this manner beyond the date of operation

inasmuch as there were a large number of companies, which were disqualified and if benefit under CFSS is extended to such companies beyond the date, the said scheme would be completely unworkable. The Petitioner was quite conscious of the fact that it had to file its documents and balance sheets in time, but has chosen not to do so. Thus, the long delay by the Petitioner cannot be completely sought to be condoned by the two or three months delay in restoring the DIN by the ROC.

16. The Petitioner was conscious of the deadlines under the CFSS and ought to have taken its remedies, but has chosen not to do so. In view of the same, this would not be a case of an extension the benefit of the CFSS scheme to the Petitioner.

17. In the facts and circumstances of this case, considering that the DIN was restored only after the order was passed by the Court in *W.P.(C) 6886/2020*, the documents and forms shall be permitted to be submitted by the Petitioner along with requisite fee in accordance with the Companies Act and Rules. In the unique facts of the present case, however, there shall be no prosecution for delay in filing of documents.

18. The petition, along with all pending applications, is disposed of in the above terms.

**PRATHIBA M. SINGH**  
**JUDGE**

**FEBRUARY 28, 2023**

*dk/kt*