

IN THE HIGH COURT OF JUDICATURE AT MADRAS
THE HON'BLE MR. JUSTICE GOH YIHAN

OA NO. 533 OF 2024

23.10.2024

Lye Yew Cheong

... Petitioner

v.

Accounting and Corporate Regulatory Authority & Ors.

... Respondents

Companies Act (Cap 50, 2006 Rev Ed) s 344(5) — Restoration of struck-off company — Person 'aggrieved' under s 344(5) if claim is not obviously hopeless — §. 344(5) sets out that (i) the applicant must be an 'aggrieved person,' (ii) the application is filed within six years, and (iii) the court must be satisfied the company was in business at the time of striking off or that restoration is just — Low threshold for standing; real or material reason for believing prejudice suffices — Minimal assets or defunct status not fatal if a genuine or non-hopeless claim is shown — Whether the company was carrying on business or in operation at time of striking off relevant but not determinative — Court retains discretion to grant or refuse restoration even if statutory criteria are met — Restoration allowed.

UK's Companies Act 1948 - s 352(1) — Restoration of company — Person 'interested' or 'aggrieved' under s 352(1) — Interest must be proprietary or pecuniary and not merely shadowy — Applicant's non-hopeless claim suffices — Restoration granted despite limited assets and operations — Court held applicant an aggrieved person and reinstated company's name to the register.

UK's Companies Act 1985 - s 653 — Restoration of struck off company — Whether applicant qualifies as 'person aggrieved' and filed application within six-year limit — No detailed inquiry into merits required at restoration stage — Even a weak but real prospect of recovery justifies restoration — Restoration granted.

UK's Companies Act 2006 (c 46) s 1029 — Restoration of struck off company — Whether applicant qualifies as 'aggrieved person' — Whether application brought within six years — Whether company was carrying on business or in operation at time of striking off — Whether 'just' to order restoration — A non-hopeless claim for defective works can justify reinstatement despite minimal assets or ceased operations — Restoration allowed.

Interpretation Act 1965 (2020 Rev Ed) s 9A(1) — Purposive Construction — Court to ascertain legislative purpose from text and statutory context — Titles and headings of provisions relevant to discern intent — Tan Cheng Bock v Attorney-General [2017] 2 SLR 850 and Tan Seng Kee v Attorney-General [2022] 1 SLR 1347 followed — Threshold for finding a company 'carrying on business' or 'in operation' under s 344(5) of Companies Act not high — Provision's title indicative of legislative aim.

UK Companies Act 1985 s 653(2) — Restoration of struck-off company — Person aggrieved or real claim — Application within six-year limit — Whether company was carrying on business or in operation at time of striking off — Minimal or lacking assets do not bar restoration — Court's wide discretion to restore if non-hopeless claim exists — Restoration allowed.

Companies Act (Cap 50, 2006 Rev Ed) — Restoration of Struck-Off Company — Discretion under s 344(5) akin to winding-up provisions under ss 253 and 254 — 'May' indicates court's discretion to refuse restoration even if company carried on business at time of striking off — Applicant must show a genuine or non-hopeless claim within six years and need not prove full merits at restoration stage — Minimal assets or apparent defunct status not an absolute bar — Requirement that a 'person aggrieved' prove the company was 'carrying on business' or 'in operation' when seeking restoration on that basis — Restoration granted where statutory criteria are satisfied and the claim warrants further adjudication.

Companies Act 1967 (2020 Rev Ed) — Restoration of company — §. 344(5) — Whether applicant qualifies as 'aggrieved person' — Application filed within six-year period — Court to determine if company was carrying on business or if restoration is otherwise just — Non-hopeless claim for defective renovation works justifies reinstatement — Restoration granted despite minimal assets or cessation of operations — Discretionary power under s 344(5) upheld.

Companies Act (Cap 50, 2006 Rev Ed) s 344(1) — Restoration of struck-off company — Threshold question: whether applicant is an 'aggrieved person' under s 344(5) — Application filed within six-year period — Court must consider if the company was carrying on business or had ongoing obligations at the time of striking off — Striking off is meant to remove defunct companies — Non-hopeless claim and minimal assets do not bar restoration — Restoration allowed.

UK's Companies Act 1948 - s 353(6) — Restoration of Struck-Off Company — Applicant 'aggrieved' by striking off — In *re Lindsay Bowman Ltd* notes a company cannot feel aggrieved absent real prospects of surplus — Here, the applicant's non-hopeless claim and genuine interest in resolving defective renovation works suffice to establish grievance — Time requirement met, ongoing obligations shown — Despite minimal assets and cessation of operations, restoration held just under s 344(5) — Discretionary criteria reaffirmed: even defunct entities may be reinstated where there is a real prospect of enforcing substantive claims.

FACTS. The applicant engaged Concept Werk Pte Ltd to carry out renovation works at a residential flat and paid a deposit. Delays and defects allegedly arose, causing further expenses. The company later ceased operations and was struck off on 8 May 2023. The applicant initially filed a claim in the Small Claims Tribunal but withdrew it to pursue a larger claim in the High Court. Because the company had been struck off, the applicant sought to restore its name under section 344(5) of the Companies Act. ACRA took no position, but Mr Xie, a former director, opposed the application, asserting that the company had ended its operations and possessed no assets. The applicant asserted that the company was not defunct, citing ongoing activities and Ms Tay's attempts to address renovation issues. The matter came before the High Court to determine whether the applicant was aggrieved and if restoration was permissible.

PRAYER. 1 HC/OA 533/2024 is an application by Mr Lye Yew Cheong (the “applicant”) for an order that the name of Concept Werk Pte Ltd (the “Company”) be restored to the register of companies (the “Register”) maintained by the Registrar of Companies of the Accounting and Corporate Regulatory Authority (the “ACRA”), pursuant to s 344(5) of the Companies Act 1967 (2020 Rev Ed) (the “CA”). Section 344(5) of the CA provides as follows:

Power of Registrar to strike defunct company off register
344.— ...

(5) If any person feels aggrieved by the name of the company having been struck off the register, the Court, on an application made by the person at any time within 6 years after the name of the company has been so struck off may, if satisfied that the company was, at the time of the striking off, carrying on business or in operation or otherwise that it is just that the name of the company be restored to the register, order the name of the company to be restored to the register, and upon a copy of the order being lodged with the Registrar the company is deemed to have continued in existence as if its name had not been struck off, and the Court may by the order give such directions and make such provisions as seem 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.

ISSUES OF LAW.

Whether the applicant qualifies as a person aggrieved under section 344(5) of the Companies Act; whether the application is filed within the required six-year period; whether the company was carrying on business or in operation at the time of striking off; whether it is just to restore the company’s name to the register.

SUMMARY. The applicant sought to restore a company that had been struck off so that he could pursue claims for allegedly defective renovation works. Mr Xie opposed the restoration, asserting that the company had ceased operations and that any claim would lack merit. The court examined whether the applicant was an aggrieved person, whether the application was made within six years, whether the company was operating at the time of striking off, and whether restoration was just. Concluding that the applicant showed a genuine interest in proceeding with his case and that the company had sufficient ongoing activities, the court allowed restoration under section 344(5) of the Companies Act. The judgment clarifies that even if a company appears defunct or has minimal assets, an applicant’s non-hopeless claim may warrant restoration when the statutory criteria are satisfied.

HELD. The court concluded that the applicant qualified as an aggrieved person and that restoration was warranted, emphasizing that a claim with real prospects may justify reinstatement even if the company had largely ceased operations or lacked significant assets. The decision clarifies the discretionary criteria for granting restoration under section 344(5).

FINAL STATUS. The application was allowed.

CASES REFERRED

AD v AE [2004] 2 SLR(R) 505
BNP Paribas v Jurong Shipyard Pte Ltd [2009] 2 SLR(R) 949
Diamond Glass Enterprise Pte Ltd v Zhong Kai Construction Co Pte Ltd [2021] 2 SLR 510
Founder Group (Hong Kong) Ltd (in liquidation) v Singapore JHC Co Pte Ltd [2023] 2 SLR 554
Fu Zhihui Alvin and another v Accounting and Corporate Regulatory Authority [2023] SGHC 177
Ganesh Paulraj v Avantgarde Shipping Pte Ltd [2019] 4 SLR 617
In re Lindsay Bowman Ltd [1969] 1 WLR 1443
In re Wood and Martin (Bricklaying Contractors) Ltd [1971] 1 WLR 293
KLW Holdings Ltd v Straitsworld Advisory Ltd and another [2017] 5 SLR 184
Leong Quee Ching Karen v Lim Soon Huat and others [2023] 4 SLR 1133
Lye Yew Cheong v [2024] SGHC 270
M2B World Asia Pacific Pte Ltd v Matsumura Akihiko [2015] 1 SLR 325
Re Asia Petan Organisation Pte Ltd [2018] 3 SLR 435
Re BCB Environmental Management Ltd (in liquidation) [2020] 2 BCLC 525
Re Blenheim Leisure (Restaurants) Ltd (No 2) [2000] BCC 821
Re Portrafram Ltd [1986] BCLC 533
Re Priceland Ltd [1997] 1 BCLC 467
Standard Chartered Bank and another v Registrar of Companies [2022] 1 BCLC 528
Stanhope Pension Trust Ltd and another v Registrar of Companies and another [1994] 1 BCLC 628
Tan Cheng Bock v Attorney-General [2017] 2 SLR 850
Tan Heng Khoon (trading as 360 VR Cars) v Wang Shing He [2024] SGHC 243
Tan Seng Kee v Attorney-General and other appeals [2022] 1 SLR 1347
Witherdale Ltd and another v Registrar of Companies and others [2008] 1 BCLC 174
Xia Zheng v Lee King Anne [2021] SGHC 199

COUNSELS

Judgment Reserved on 16.09.2024 and Pronounced on 23.10.2024