

SUPREME COURT OF SEYCHELLES

Reportable
[2022] SCSC *263*
MC 104/2021

In the matter between:

EMEKA EMMANUEL NWAObI
In his capacity as director and member of
RONEC INVESTMENTS LIMITED
(rep. by Mr. J. Camille)

Petitioner

And

REGISTRAR OF INTERNATIONAL
BUSINESS COMPANIES

Respondent

Neutral Citation: Nwaobi v Registrar of International Business Companies (MC104/2021)
[2022] SCSC *263* (23 March 2022)

Before: Carolus J

Summary: Application to restore name of International Business Company to the Register – International Business Companies Act 2016 and 1994.

Heard: 23 February 2022

Delivered: 23 March 2022

ORDER

CAROLUS J

- [1] The Petitioner Emeka Emmanuel Nwaobi in his capacity as director and member of RONEC INVESTMENTS LIMITED (“the Company”) has petitioned this Court to restore the name of the Company to the Register of International Business Companies (“the Register”) pursuant to section 277(1) of the International Business Companies Act 15 of 2016 as amended (“the 2016 Act”). The petition is supported by an affidavit sworn by the petitioner who avers therein that he is the sole director, shareholder and beneficial owner of the Company. Relevant documents are exhibited to the affidavit.

- [2] The Company is an International Business Company (“IBC”) incorporated in Seychelles on 15th July 2011 with Company Registration No. 093834, under the International Business Companies Act 1994 (Cap 100A) as amended (“the 1994 Act”) which was repealed and replaced by the 2016 Act in its section 392. The 2016 Act came into operation on 1st November 2016 by virtue of the International Business Companies Act, 2016 (Commencement) Notice, 2016 (S.I. 72 of 2016).
- [3] It is averred in the petition that on or about 1st January 2014 the Company was struck off the Register in accordance with the provisions of the 1994 Act due to non-payment of its 2012 annual renewal fees payable to the Registrar under the 1994 Act and was subsequently deemed to be dissolved on or about 1st January 2021, seven years after it was struck off the Register. The non-payment, it is averred, was due to an administrative oversight on the part of the Company and the petitioner’s UK agents. The petitioner has produced a Certificate of Official Search dated 11th March 2022 issued by the Registrar of Business Companies certifying the status of the Company as dissolved although the date of striking off or dissolution is not mentioned therein.
- [4] It is also averred in the petition that the Company was deemed to be automatically re-registered as an international business company under the 2016 Act with effect from its commencement date pursuant to section 383(1) of the same Act.
- [5] If the Company was struck off the Register kept under the 1994 Act and dissolved before the 2016 Act came into operation on 1st November 2016, it cannot have been automatically re-registered under 383(1). This provision provides for automatic re-registration of IBCs which were still registered, i.e. not struck off the Register kept under the 1994 Act or dissolved, when the 2016 Act came into operation. This is confirmed by the wording of sections 386 and 387 of the 2016 Act which deal with applications for “Restoration of former Act companies struck off the register maintained under the former Act” and “Restoration of dissolved former Act companies” respectively and which are reproduced below:

386. (1) Every application to restore a former Act company that has been struck off the register kept under the former Act but not dissolved, made on or after the Act

commencement date, whether to the Registrar or to the Court, shall be made under, and determined in accordance with, this Act as if the former Act company had been a company struck off the Register under this Act.

(2) Where, pursuant to an application made under subsection (1), a company is restored, it shall be restored to the Register maintained under this Act.

387. *(1) An application may be made to the Court under this Act to rescind the dissolution of a former Act company dissolved under the former Act as if it was a company dissolved under this Act on the date that it was dissolved under the former Act.*

(2) An application made under subsection (1) —

(a) shall be made within seven years of the dissolution of the former Act company under the former Act;

(b) shall be determined in accordance with this Act.

(3) If the dissolution of a former Act company is rescinded in accordance with this section, the company shall be restored to the Register maintained under this Act.

[6] As stated, there is no evidence of the date on which the Company's name was struck off the Register or the date of its subsequent dissolution, which are relevant when considering an application to restore an IBC to the Register, as there is a time frame within which such applications can be done after the name of an IBC is struck off or it is dissolved. Nonetheless I note that the dates of striking off and dissolution of the Company as stated in the petition have not been objected to by counsel for the Registrar, who has not contested the application.

[7] In order to ascertain whether the dates as stated in the petition are correct, proceeding on the assumption that the striking off occurred as a result of non-payment of the Company's annual renewal fees which I take to mean annual license fees, as averred in the petition, it is necessary to look at the provisions regarding striking off of the names of IBCs from the Register under the 1994 Act, pursuant to which the name of the Company was struck off.

[8] Section 103 of the 1994 Act provides that "*A company the name of which is on the Register on 31st December in any year shall, before 31st July of the following year, pay to*

the Registrar an annual licence fee specified in Part II of the Schedule". Part II of the Schedule to the Act deals with those annual license fees. Paragraphs 2, 3, and 4 thereof provide as follows:

1. *A company the name of which is on the register on 31st December in any year shall, before the date of the relevant anniversary of its incorporation under the Act, pay to the Registrar an annual licence fee of \$100.*
2. *If a company fails to pay the amount due as the licence fee under paragraph 2 by the date specified therein, the licence fee increases by 10 per cent of that amount.*
3. *If a company fails to pay the amount due as an increased licence fee under paragraph 3. 90 days after the date when it becomes due, then, the licence fee increases by 50 per cent of the licence fee specified in paragraph 2.*

[9] Section 97 (5) and (6) of the 1994 Act further provide that:

- (5) *If a company has failed to pay the increased licence fee payable under paragraph 3 of Part II of the Schedule, the Registrar shall, within 30 days immediately following the date specified in section 103, publish in the Gazette and serve on the company a notice stating the amount of the licence fee payable and stating that the name of the Company will be struck off the Register if the company fails to pay the licence fee on or before the 31st December next ensuing following a period of ninety days from the date on which the licence fee increases by 50 per cent under paragraph 4 of part II of the Schedule.*
- (6) *If a company fails to pay the increased licence fee stated in the notice referred to in subsection (5) by the 31st December referred to in that subsection, the Registrar shall strike the name of the company off the Register from the 1st January next ensuing.*

[10] If the Company was struck off the Register for non-payment of its 2012 annual renewal fees, then according to the aforementioned provisions it appears that it would indeed have been struck off the Register on 1st January 2014 as averred in the petition.

[11] Section 101 of the 1994 Act deals with the dissolution of IBCs which have been struck off the register. Subsection (1) provides in relevant part that:

- (7) *If the name of a company has been struck off the Register under section 97(6) and remains struck off continuously for a period of ... 10 years ..., the company shall be deemed to have been dissolved ...*

[12] I have found that the Company would have been struck off on 1st January 2014. According to the petition it is deemed to have been dissolved on or about 1st January 2021. Under section 101(1) of the 1994 Act an IBC is deemed to have been dissolved if it remains struck off continuously for a period of 10 years which would take us to 1st January 2024 i.e. 10 years after 1st January 2014 which is the date of striking off of the name of the Company.

[13] However it must be borne in mind that the 1994 Act was repealed and replaced by the 2016 Act which came into operation on 1st November 2016 i.e. before 1st January 2024 the date on which the Company would have been deemed dissolved under the 1994 Act. In paragraph 3 of the petition, reference is made to section 275 of the 2016 Act in that regard. Section 275 of the 2016 Act provides for the dissolution of IBCs which have been struck off the Register.

[14] The original 2016 Act i.e. Act 15 of 2016, in its section 275 provided for a period of 5 years after which an IBC the name of which had been struck of the register was dissolved. It was worded as follows:

275. Where the name of a company that has been struck off the Register under section 272 remains struck off continuously for a period of five years, it is dissolved with effect from the last day of that period.

[15] With the International Business Companies (Amendment) Act, 2018 (Act 12 of 2018) section 275 was amended to change the period of five years to seven years, and also to add the words “*and any period during which a company has been struck off in terms of any previous provisions under the former Act shall, for the purpose of this section include that period*” so that the amended section read as follows:

275. Where the name of a company that has been struck off the Register under section 272 remains struck off continuously for a period of seven years, it is dissolved with effect from the last day of that period and any period during which a company has been struck off in terms of any previous provisions under the former Act shall, for the purpose of this section include that period.

[16] However while the amended section 275 makes clear that where the name of an IBC is struck off the Register under the provisions of the 2016 Act and remains struck off for a period of seven years it is dissolved on the last day of those seven years, it is unclear as to what the amendment aims to provide for regarding an IBC which was struck off under the 1994 Act and remained struck off at the time that the 2016 Act came into operation, which it seems to me is what this provision intended to clarify. It is my view that what it was attempting to say is that *“any period during which a company has been struck off in terms of any previous provisions under the former Act shall, for the purpose of this section be included in that period (of seven years)”*.

[17] In 2021 section 275 of the 2016 Act, was again amended by the International Business Companies (Amendment) Act, 2021 (Act 32 of 2021) reducing the period after which an IBC’s name is struck off the Register for it to be dissolved to one year. Section 275 of the 2016 Act as amended by Act 32 of 2021 (i.e. the current version of the Act) reads as follows:

275. Where the name of a company that has been struck off the Register under section 272 remains struck off continuously for a period of one year, it is dissolved with effect from the last day of that period [of one year] and any period during which a company has been struck off in terms of any previous provisions under the former Act shall, for the purpose of this section [be included in] that period .

[18] Section 272 to which reference is made in section 275 deals with striking off of IBCs from the Register. One of the grounds on which an IBC may be struck off under the current version of the 2016 Act after it was amended by Act 32 of 2021, the wording of which is identical to section 272(1)(c) of the original 2016 Act (Act 15 of 2016) is if *“the company fails to pay to the Registrar its annual fee or any late payment penalty thereon within 180 days of the due date ...”* which is the reason for which the Company was struck off the Register albeit under the 1994 Act.

[19] The amendment effected by Act 32 of 2021 came into operation on 6th August 2021 when it was gazetted except for certain of its provisions including those amending section 275 which were to come into operation at a later date. Under section 60(2) of Act 32 of 2021 the amendment to section 275 is only to come into operation on 1st January 2022. For the

purposes of the present application therefore, it is section 275 as amended by Act 12 of 2018 which would be the applicable law.

[20] In terms of that section, the name of the Company having been struck off on 1st January 2014, it is dissolved on the last day of the seven year period for which it has remained struck off the register inclusive of the period during which it was struck off under the 1994 Act i.e. 31st December 2021.

[21] Having determined the date on which the Company's name was struck off the Register (1st January 2014), and the date of its dissolution (31st December 2021), it now remains for the provisions relating to the restoration of the name of the Company to the Register to be looked at namely section 277 of the 2016 Act as amended by Act 32 of 2021 under which the present application is made, which provides in its subsections (1) and (2) as follows:

277. (1) Subject to subsection (2), where the name of a company has been struck off the Register for any reason, an application to restore the name of the struck off or dissolved company to the Register may be made to the Court by —

(a) a creditor, member, former member, director, former director, liquidator or former liquidator of the company; or

(b) any other person who can establish an interest in having the company restored to the Register.

(2) An application to restore the name of a struck off or dissolved company to the Register under subsection (1) may be made to the Court —

(a) within one year of the date of striking off under section 272(1)(c) or within one year from the date of the striking-off notice published in the Gazette under section 272(4); or

(b) within three years of the date of dissolution under Sub-Part I, II, III or IV of the Part XVII of this Act.

[22] Under section 60(2) of Act 32 of 2021, however, the amendment to section 277(2)(a) and (b) effected by Act 32 of 2021, is only to come into operation on 1st January 2022. The

amendment decreased the period of twelve years to a period of one year under paragraph (a) and decreased the period of five years to a period of three years under paragraph (b). For the purposes of the present application therefore, the time frame to file an application to the Court for restoration to the Register of the name of a Company which has been struck off is within twelve years of the striking off. In regards to a company which is dissolved the time frame is five years of the date of dissolution i.e. the prescribed time frame prior to the amendment by Act 32 of 2021. The name of the Company was struck off the Register on 1st January 2014 and dissolved on 31st December 2021. The present application was filed on 30th December 2021, one day before the dissolution of the Company. It is therefore section 277(2)(a) which will apply and I find that the Company is well within the 12 year time frame from the striking of the Company's name off the Register to make the application.

[23] Subsection (4) of section 277 provides as follows:

277. [...]

(4) On an application under subsection (1) and subject to subsections (4A), (4B) and (5), the Court may—

(a) restore the company to the Register subject to such conditions as it considers appropriate; and

(b) give such directions or make such orders as it considers necessary or desirable for the purpose of placing the company and any other persons as nearly as possible in the same position as if the company had not been dissolved or struck off the Register.

[24] Subsection (4A) of section 277 further provides for certain matters as to which the Court must be satisfied before making a Restoration Order. The petitioner has not provided any information regarding the same but given that counsel for the Registrar did not object to the petition, I take it that these matters are in order. Subsection 4(A) provides as follows:

(4A) The Court shall not restore the name of a struck off or dissolved company if the Court is not satisfied that the company is in compliance of its obligations—

(a) under this Act relating to accounting records, register of members and register of director; and

(b) under the Beneficial Ownership Act, 2020 (Act 4 of 2020) relating to register of beneficial owners.

[25] Subsections (5) and (6) of section 277 provides for the filing of the Restoration Order with the Registrar, whereupon the Registrar shall restore the company to the Register with effect from the date and time of the filing of the Order. However this is subject to subsection (7) which reads as follows:

(7) Notwithstanding its receipt of a copy of the sealed restoration order, the Registrar shall not restore the company to the Register until -

(a) payment to it of all outstanding annual fees and any penalty or other fees payable under this Act in relation to the company; and

(b) if the proposed registered agent of the company was not the company's registered agent when it was struck off the Registrar (the "outgoing registered agent"), the Registrar receives a written consent to the change of registered agent by the outgoing registered agent (who must provide such consent unless any fees due and payable to it have not been paid).

[26] In that regard the petitioner has averred that "[a]s a condition of the grant of this Petition ... the Petitioner undertakes and confirms on the Company's behalf that it is ready, willing and able (prior to restoration of the Company's name on the Register) to pay to the Respondent: (i) all outstanding annual fees and all penalties payable under the IBC Act and the 1994 Act, and (ii) the restoration fee payable under paragraph (y) of the Second Schedule to the IBC Act".

[27] I am satisfied that the conditions for the Court to make a Restoration Order under section 177 has been fulfilled. Accordingly, pursuant to the same section, I make order for the Registrar of International Business Companies to restore the name of the Company RONEC INVESTMENTS LIMITED to the Register of International Business Companies, subject to compliance with the requirements of the IBC Act 2016 for such restoration, and upon payment to the Registrar of:

(a) all outstanding annual fees and penalties payable under both the IBC Act, 2016 and the IBC Act 1994;

(b) the restoration fee payable under paragraph (y) of Part II of the Second Schedule to the IBC Act, 2016; and

(c) any other fees payable under the IBC Act, 2016.

[28] Under subsection (9) of section 277, upon restoration of the name of the Company to the Register, the Company is deemed to have continued in existence as if it had not been dissolved or struck off the Register.

Signed, dated and delivered at Ile du Port on 23rd March 2022

Carolus .

E. Carolus J