

SUPREME COURT OF SEYCHELLES

Reportable
XP11/2024

In the ex parte matter of:

GRAND TECH COMPANY LIMITED
(rep. by Ms Lucie Pool)

Applicant

Neutral:	<i>Ex Parte: Grand Tech Company Limited XP11/2024 (20th May 2024)</i>
Before:	Adeline j
Summary:	Application for the restoration of company, Grand Tech Company Limited, to the Register of Companies maintained under the International Business Company Act 2016.
Heard:	20 th May 2024
Delivered:	20 th May 2024

ORDER

This court grants the application, and accordingly makes an order for the Registrar of International Business Companies to restore the name of the company, GRAND TECH COMPANY LIMITED to the register. The restoration of the company to the register shall be on condition that the company is in compliance with the statutory requirements of Section 277 (4A) of the International Business Companies Act, 2016 as amended in respect of accounting records, register of members and register of directors, as well as its obligations under the Beneficial Ownership Act 2020 as regards to the register of beneficial owners.

RULING

Adeline j

BACKGROUND INTRODUCTION

[1] This court is seised of an application filed ex parte pursuant to section 277 of the International Business Companies Act, 2016 as amended, (“the Act”) made by a company incorporated under the Act as Grand Tech Company Limited (“the Applicant”) by which application, the Applicant prays this court for the following order;

(i) *“to order the Financial Services Authority (FSA) to restore GRAND TECH COMPANY LIMITED (company No:11223) to the register of companies conditional upon full payment of outstanding fees and other fees and penalties”.*

PLEADINGS

[2] There is appended to the application in support of the same, an affidavit sworn by one Juliette Michelle Denousse (NIN [REDACTED]) Manager, Corporate Services and Compliance of SAST OFFSHORE (PTY) LTD of Trinity House, Victoria, Mahe, Seychelles to which are exhibited the relevant documents. In her affidavit in support of the application, the deponent makes the following averments;

- “1. *“That the Applicant company was incorporated under the International Business Company Act (“IBC Act”) on the 11th February 2003 under company Registration Number 011223. A copy of the Certificate of Incorporation is shown to me produced marked exhibit “JD1”.*
2. *That it was struck off the register of companies owing to voluntary dissolution effective from 1st March 2022. A copy of the certificate of dissolution of the company dated 1st March 2022 is shown to me, produced, marked “JD2”.*
3. *In consequence, the Financial Services Authority (FSA) as Registrar of the International Business Companies Act, published a notice of striking off in the Official Gazette No: 12 of 2022 dated 7th March 2022. A copy is shown to me produced marked exhibit “JD3”.*
4. *The Applicant avers, that at the time of the dissolution, it satisfied the requirements of Section 5 of the previous IBC Act 1994 (CAP 100A) as the company was in business.*

5. *That it would be fair and reasonable for the name of the Applicant to be restored to the register.*
6. *I confirm that the Applicant company complies with Section 5 of the previous IBC Act, 1994 (CAP 100A) at the time of the dissolution and it would be fair and reasonable for the name of the Applicant to be restored to the register. We respectfully apply to this Honorable Court to order its reinstatement.*
7. *That we undertake to pay all outstanding fees and other accrued fees and penalties to the Registrar of Companies”.*

[3] Having had prior notice of the application, the Registrar of International Business Companies instructed counsel to put appearance in court on its behalf. In reply to the application, learned counsel filed in court on behalf of the Registrar the latter objection to the application. Amongst other things, in its pleadings the following averments are made

“2 *It is averred that;*

- (a) *The application has not been made by a person who has the right and locus standi to make an application to restore the name of an international business company on the Register of International Business Companies in accordance with the International Business Act, 2016, and*
- (b) *The Respondent is not satisfied, that the Applicant is in compliance of its obligations;*
 - (i) *Under the International Companies Act, 2016 relating to accounting records, register of members and/or register of Director, and or*
 - (ii) *Under the Beneficial Ownership Act, relating to its register of beneficial ownership”.*

[4] Objecting to the application, the Registrar of International Business, acting as the Respondent to this application, prays this court to dismiss this application with cost.

[5] On the date appointed for the hearing of the application on the 30th April 2024, learned counsel for the Registrar/Respondent informed the court, that the Respondent has

changed its stance towards the application for the restoration of the company/Applicant to the register effectively abandoning its objection to the application. Learned counsel told the court, that the Registrar does not object to the restoration of the company applicant to the register of companies subject to it complying with the terms of Section 277 of the International Business Act 2016.

DISCUSSION OF THE FACTS AND LAW

[6] The affidavit evidence laid before this court shows, that the company applicant is an International Business Company “IBC” which was incorporated on the 11th February 2003 under the then International Business Companies Act 1994 (CAP 100A) as amended which has since been repealed and replaced by the Companies Act 2016 in its Section 392. The company, GRAND TECH COMPANY LIMITED, was deemed to be automatically re-registered as an International Business Company under the 2016 Act, retaining its company registration No 011223.

[7] By way of a voluntary dissolution pursuant to sub-part II of part XVII of the 2016 Act, on the 8th February 2022, the company was dissolved. A certificate of dissolution was issued by the Registrar of International Business Companies under the statutory provisions of 297 (3) (b) of the International Business Companies Act, 2016.

[8] Section 277 of the International Business Companies Act 2016, as amended by Act 32 of 2021, the statutory legal provision under which the company/Applicant makes this application provides under subsection (1) and (2) for the following couched in the following terms;

“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 by the court;

(a)

(b) Within three years of the date of dissolution under sub-part I, II, III or IV of part XVII of this Act”.

[9] My interpretation of Section 277 (1) (a) and (b), leads me to the conclusion, that the company applicant has no standing to make this application under consideration. This, in fact, is a point raised by learned defence counsel in its pleadings objecting to the application which objection it subsequently withdrew. I am satisfied, however, that this application which was filed on the 1st February 2024 is within the prescriptive time period of three years from the 1st of March 2022.

[10] At this juncture, this court has to have regards to subsection 4 of Section 277 of the 2016 Act, as amended, that reads as follows;

“277:

(1)

(2)

(3)

(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.

[11] It is provided under subsection (4A) of section 277 of the 2016 Act as amended, that before making the Restoration Order being sought for, the court must be satisfied, that the company is in compliance of its obligations under the Act. This test stems from subsection (4A) of section 277 of the Act which is couched in the following terms;

“(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, that is to say Act 4 of 2020 relating to the register of beneficial owners”.

CONCLUSION

[12] Within the background of the facts laid before this court by way of affidavit evidence applied to the law under Section 277 of the International Business Companies Act 2016 as amended, particularly the subsections of Section 277 discussed in the preceding paragraphs of this ruling in the light of the stance taken by learned counsel representing the Registrar of International Business Companies, this court grants the application, and accordingly makes an order for the Registrar of International Business Companies to restore the name of the company, GRAND TECH COMPANY LIMITED to the register.

[13] The restoration of the company to the register shall be on condition that the company is in compliance with the statutory requirements of Section 277 (4A) of the International Business Companies Act, 2016 as amended in respect of accounting records, register of members and register of directors, as well as its obligations under the Beneficial Ownership Act 2020 as regards to the register of beneficial owners.

[14] This court directs, that a copy of this ruling be served on the Registrar of International Business Companies.

Signed, dated and delivered at Ile du Port on 20 May 2024

Adeline j