

**THE NATIONAL COMPANY LAW TRIBUNAL CHANDIGARH BENCH  
(COURT-II), CHANDIGARH**

**COMP.APPL/112 (CH)2024  
And  
Company Petition No. 63/Chd/J&K/2023  
Under Section 252(3) of the  
Companies Act, 2013.**

**In the matter of:**

**1. Itfaq Builders Private Limited**

Registered Address: Gingal Upper,  
Baramulla, Srinagar, Kashmir,  
Jammu & Kashmir, India, 193122  
Through: -Syad Adil Hussain  
S/O Sayed Imtiyaz Hussain  
R/O Gingal, Mohara, Baramula,  
Kashmir, J & K -193122  
CIN U70103JK2020PTC011918  
Email ID- cskajalgoyal@gmail.com

**2. SAYED IMTIYAZ HUSSAIN**

S/O Sayed Umar Shah  
R/O Gingal Uri Nagar, Baramulla Kashmir,  
Srinagar, J & K -193122  
Email ID- cskajalgoyal@gmail.com

.....Appellants

Versus

**1. Registrar of Companies, J&K**

Sda Office Complex, Ground Floor,  
Bemina Bypass, Srinagar-190018

EMAIL ID- roc.srinagar@mca.gov.in

## 2. Income Tax Department

Income Tax Office, ITO Circle-1, C.R. Building,  
Plot No. 19, ISBT Road, 17C, Sector 17, Chandigarh-160017

...Respondents

**Order delivered on: 01.07.2024**

**Coram: HON'BLE DR. P.S.N. PRASAD, MEMBER (JUDICIAL)  
HON'BLE MR. SATYA RANJAN PRASAD, MEMBER (TECHNICAL)**

**Present: -**

For the Appellant : Mr. Sameer Srivastava, Advocate  
Income Tax Department : Mr. Yogesh Putney, Senior Standing Counsel

**Per: Dr. P.S.N. Prasad , Member (Judicial)**

**Mr. Satya Ranjan Prasad, Member (Technical)**

### **ORDER**

1. This Company appeal has been filed by **Itfaq Builders Private Limited** (hereinafter referred to as Appellant company) through Mr. Syad Adil Hussain S/O Sayed Imtiyaz Hussain R/O Gingal, Mohara, Baramula, Kashmir, J & K - 193122 under Section 252(3) of the Companies Act, 2013 against the order of Registrar of Companies, Jammu (hereinafter referred to as 'RoC') dated 20.12.2022 of striking off the name of the Appellant company having registered address at Gingal Upper, Baramulla, Srinagar, Kashmir, Jammu & Kashmir, India, 193122 (CIN U70103JK2020PTC011918) from the Register of Companies, maintained in the office of the RoC.
2. As the registered office of the company is in Jammu and Kashmir, this appeal is within the territorial jurisdiction of this Tribunal.

**FACTS OF THE CASE**

3. The facts of the case, as submitted in the appeal, have been summarised below:

a. 1. The Appellant Company i.e. Itfaq Builders Private Limited, has been incorporated under the provisions of the Companies Act. 1956 ("Act") as a Private Limited Company with the Registrar of Companies, Jammu on December 02, 2020. The Corporate Identification Number of the Appellant Company is U70103JK2020PTC011918. The authorized share capital of the company is Rs. 15,00,000 (Rupees Fifteen Lakh Only) consisting of 1,50,000 equity shares of Rs. 10 each, out of which 1,000 equity shares of Rs. 10 each have been issued, subscribed and paid up and accordingly Rs. 10,000 is the paid up share capital of the company. The copy of the Certificate of Incorporation along with the copy of master data of the Company as appearing on the MCA portal duly certified by the appellant is annexed along with the appeal as ANNEXURE-2.

b. The Appellant Company had following main objects as set out in the Memorandum of Association of the Company

*"1. To carry on the business as estate agents, housing and land agents, property dealers and estate managers and to collect rents, repair, look after and manage immovable properties of or for any persons, firms and companies, governments and states, as well as this company, to give, take, let and sublet and to carry out under taking, supervising, building, constructing, altering, improving, demolishing and repairing operations and all other works and operations in connection with immovable estates and properties.*

*2. To erect, build, construct, alter, equip, maintain or replace and to manage buildings, factories, sheds, offices, warehouses, workshops, stores, dwellings, mills, shops, roads, tanks, waterworks and other works and conveniences which may seem necessary for the purpose of the Company. “*

A copy of the Memorandum & Articles of Association of the Appellant Company duly certified by the appellants is attached herewith and marked as ANNEXURE - 3.

- c. The Appellants submit that they were duly active in doing business activities and were continuously engaged in the business in an efficient and prospective manner, and are equally interested in carrying the business further under the Same name and style.
- d. The subscribers to the Memorandum of Association of the Company has duly submitted the amount i.e. Rs. 5,000/- each in cash in May 2021 as the bank account of the Company was not opened till then and the declaration to this effect is attached as ANNEXURE-7. The Company was searching for the right business opportunities and right kind of support to look after the compliances thereby, leading to delay in filing of eForm 20A.
- e. The bank statement of Appellant Company of the 1 current Bank Accounts maintained by the Company is attached as ANNEXURE-8. Further, the copy of letter of allotment/ award of two tenders received in favor of the Company for construction of Bunker at Uranbua Colony, Uri Power Station is annexed with the appeal as ANNEXURE-9.

- f. The copy of the audited Balance Sheet and Profit and Loss Statements for the F.Y. 2020-21 and 2021-22 of the Appellant Company is annexed with the appeal as ANNEXURE-10.
- g. The sole reason is that inadvertently due to lack of support the Appellant Company failed to eForm-INC-20A for commencement of business, and that striking off of the name of the Appellant Company from the Register of Companies maintained by Respondent would result in bring the working of an operating Company to a standstill, thereby adversely affecting not only the Appellant Company but its shareholders, creditors and other stakeholders and dealing parties.
- h. The present strike off will result in the three folded loss which includes the Taxes that are paid to the Government, the loss of the tender that is allotted to the Company, which will also result in the indirect loss of the Company, and the Shareholders and Appellant itself in the form of the investments made and goodwill earned in these years from hard work as otherwise the shareholders and Directors will have to start from scratch in establishing another Company which will be very harsh on the various stakeholders of the Appellant as well.
- i. The appellants further submit that no notice has been received by the Company or any other officer of the Company in terms of Section 248 of the Companies Act, 2013 prior to the name of the Appellant Company being struck-off from the Register of Companies and only when the Notice in the form of STK-7 was received, the Company came to know about the dissolution of Company at the end of the Registrar, as a result, the opportunity of being heard before striking off the name of the Appellant Company from the record of Registrar of Companies was not

provided. Further, Section 252 of the Act itself provides ample time to a Company to show reasonable cause that the Company is carrying on business or is in operation, which is missing in the present case.

j. The respondent no. 1 vide public notice in Form No. STK-7 on 20.12.2022 published notice that the name of the appellant company has been struck off the register of companies and the said company is dissolved.

4. This Tribunal vide order dated 30.05.2023 has directed to issue the notice of the petition to the concerned authorities.

### **ROC REPORT**

5. The RoC has submitted its report through post vide letter No. ROC/JMU/252(30/2023-24/NCLT/79 dated 10.08.2023. It is submitted in the report that:

a. That as per the record of MCA-21, the petitioner company M/s ITFAQ BUILDERS PRIVATE LIMITED was incorporated on 02.12.2020 as a Private Limited Company having CIN 70103JK2020PTC011918 and Registration Number 011918. The aforesaid company was obliged under sub-section (1)(a) of section 10A of the Companies Act, 2013 to file e-form INC-20A for the commencement of its business activities within 180 days of its incorporation.

b. As on date, following persons are the Directors of the petitioner company: I. Sh. Syed Adil Hussain II. Sh. Syed Imtiyaz Hussain Shah.

c. That despite the statutory requirement, the petitioner company failed to fulfil its statutory obligation and did not file the required e-form INC-20A within the stipulated time frame viz. 180 days of its incorporation under

sub-section (1)(a) of section 10A of the Companies Act, 2013. Subsequently, the Registrar of Companies initiated the necessary action as per the provisions of sub-section (1)(d) of section 248 of the Companies Act, 2013 read with Rule 3 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 for striking off its name from the Register of Companies.

- d. Notice by ROC: That the petitioner company alleges that no notice was given by the respondent before the strike off. However, it is pertinent to note that the respondent did, in fact, issued a notice in Form No. STK-1 dated 27.01.2022 followed by 07.09.2022 to the registered office of the petitioner company and its directors at their addresses as available on the records of MCA portal intimating the impending strike off and providing an opportunity of being heard. Therefore, the contention raised by the petitioner company lacks merit.
- e. That it is a matter of record that the petitioner company failed to respond to the aforementioned notice issued by the respondent. The ROC, by issuing such a notice duly complied with the principle of natural justice affording the petitioner company an ample opportunity to present its case and provide justifiable reasons for its non-compliance.
- f. Delay filing of the e-form INC 20A: That it is a matter of record that the petitioner company has not complied with the provisions of sub-section (1)(a) of section 10A of the Companies Act, 2013 whereas filed the e-form INC-20A on 11.11.2022 with the delay of 17 months and 11 days from the due date. Further, the filing was done after the issuance of notice in Form No. STK-1 dated 07.09.2022. Further, even after issuance of Form No. STK-1, the petitioner company failed to respond

to the said notice. Despite the petitioner company claim of unintentional delay, it is evident that there was a considerable lapse of time between the due date of filing and the actual filing.

- g. Conclusion: That as per the provisions of sub-section (1)(a) and (3) of section 10A of the Companies Act, 2013 read with sub-section (1)(d) of section 248 and the rules made therein, every company is obliged to adhere to the prescribed timelines and file necessary forms with the ROC. Non-compliance, as evident in the case of the petitioner company results in the lawful initiation of the striking off process. The respondent, in exercising its statutory duties followed due procedure and the action of the respondent was legally sound and justified. It is respectfully submitted that respondent has no objection if the name of the company is restored in the "Register of Companies" as maintained by the respondent under the provisions of the Companies Act, 2013 as the due compliance was made on a later date. However, it is submitted that the gazette notification cannot be set aside as it was published in accordance with the law and no illegality has been committed by the respondent as alleged by the petitioner company in its petition filed under section 252(3) of the Companies Act, 2013.

- h. Lastly, the RoC report submits the following prayer,

*"1) It is respectfully prayed that if the name of the petitioner company is restored in the Register of Companies maintained by the respondent, the cost may be awarded to the Registrar of Companies and necessary directions, if any, may be issued to the petitioner company by the Hon'ble Tribunal to ensure the compliance of provisions of the Companies Act, 2013 regarding filing of all the statutory documents.*



*2. That according to the provisions outlined under section 252 of the Companies Act, 2013 and the rules made therein, Gazette Notification is not required anywhere during the process of restoration of the name to the Register of companies maintained by the Registrar of Companies. However, if the Hon'ble Tribunal directs on the prayer of the petitioner for such an action, then it is prayed that associated expenditure may be borne by the company/petitioner itself.”*

### **INCOME TAX DEPARTMENT REPORT**

6. The Income Tax Department in its report filed vide Diary No. 01651/12 dated 13.05.2024 has enclosed the affidavit of Sh. Sumit Kumar, Income Tax Officer, Ward 1, Srinagar dated 09.04.2024. It is submitted in the report that:
- a. That the Petitioner has filed the Company Petition under Section 252(1) of the Companies Act, 2013 seeking approval of the Hon'ble Tribunal for restoration of name of M/s Itfaq Builders Private Limited in the Register of Companies maintained by the Registrar of Companies, Jammu & Kashmir.
  - b. That, as per the Company Petition, the name of the Company was struck off from the Register of Companies in terms of provisions of the Companies Act, 2013 and the same was published in the Official Gazette.
  - c. That the Answering Respondent after consulting the record has found that the Petitioner Company i.e. M/s Itfaq Builders Private Limited was incorporated on 02.12.2020 and, as of now, no demand is outstanding against the Company.
  - d. The Return of Income for the Assessment Year 2023-24 has been filed by the Company on 23.12.2023 at an income of Rs. 3,930/-.

e. That, in view of the aforesaid, appropriate orders may kindly be passed and the interest of the Revenue may kindly be protected by granting liberty to the Revenue to proceed against the Company for defaults), if any, under the provisions of the Income Tax Act, 1961, and for recovery of the demand, if any, found later on.

f. The Income tax department submits the following Prayer-

*“It is, therefore, respectfully prayed that the appropriate order may kindly be passed, the interest of the Revenue be protected, and liberty may kindly be granted to the Revenue to proceed against the Company for defaults), if any, under the provisions of the Income Tax Act, 1961, with directions to the Company to discharge the demand, if any, found later on.”*

7. The appellant company had been directed to furnish their Income tax returns for the last three years in support of their application for revival, vide order dated 15.12.2023. The abovementioned ITR's were filed vide diary number 01651/8 dated 10.01.2024.

#### **FACTS OF COMP.APPL/112 (CH)2024**

8. That the Petitioner/Applicant filed, the present company application under Rule 11 of the National Company Law Tribunal, Adjudicating Rules, 2016 seeking direction to de-freeze Company's bank account bearing account no. 0726010100000259.

9. That due to freezing of the Company current bank account, applicant company is unable to carry on its day-to-day affairs for making payments in the ordinary course of business, giving salaries to its employees, making electricity, water charges etc., paying taxes for carrying on business etc.

10. That the Petitioner has filed an application under Rule 11 of NCLT Rules, 2016 bearing IA no. 27/2023 in the above captioned matter seeking the same relief as prayed under the present Application which was partially allowed to the effect that only credits were to be received to the bank account bearing number 0726010100000259, and also directed that the credit balance information may be provided to the applicant so as to enable him to plan for discharge of his liabilities and other financial commitments and move appropriate application before this Tribunal in the matter.

11. That the Appellant Company is presently having Rs. 65,46,454/- in the above said bank account and also having liability around Rs. 21,83,980 /- (Rupees Twenty Eighty-Three Thousand Nine Hundred Only). Copy of the Bank Statement of Jammu & Kashmir Bank Ltd bearing a/c no.0726010100000259 reflecting the current balance along with the calculation sheet of the liabilities are annexed with the application as Annexure P/2 (Colly).

### **DIRECTIONS**

12. After careful consideration of the report of RoC, Income Tax Department and other documents, this Tribunal is of the view that it would be just, equitable, and fair in the interest of justice to provide an opportunity to the company to rectify its defaults and continue the business. Accordingly, this Tribunal, in the exercise of the powers conferred on it under Section 252 of the Companies Act, 2013, orders that:

- a. The RoC being Respondent No. 1 herein, subject to payment of costs of ₹50,000/- (Rupees Fifty Thousand only) to be paid by the appellant in favour of "NCLT Bar Association, Chandigarh" is directed to restore the original status of the Petitioner company, as if the name of the company had not been struck off from the register of companies with the resultant and

consequential actions like changing status of petitioner company from 'struck off' to 'active'.

- b. The appellant is directed to deliver a certified copy of this order to the RoC, within thirty days of the receipt of this order.
- c. On such delivery and after due compliance with the above directions, the RoC is directed to publish the order in the official gazette under his office, name and seal.
- d. The appellant/ company is directed to file all the pending documents including all the due annual returns and balance sheets, if any, along with the requisite fee, and additional fee as prescribed in the Rules and fines as decided by RoC, within 45 days from the date, on which its name is restored on the register of companies maintained by the RoC.
- e. This order is confined to the violations, which ultimately led to the impugned action of striking off the name of the company. It will not come in the way of the RoC, to take appropriate action in accordance with the law for any other violations/offences, if any, committed by the appellant/ company prior to or during the period, when the name of the company remained struck off.
- f. The Income Tax Department is granted the liberty to proceed against the appellant/ company for non-filing/belated filing of the return of income/other default(s) under the provisions of the Income Tax Act, 1961 and the appellant is directed to discharge the outstanding demand and the demand, if any, found later on against the company.
- g. Consequent upon the restoration of the Appellant company's name, the Jammu & Kashmir Bank Limited, Business Unit Salamabad, Uri, Jammu &

Kashmir is directed to de-freeze the Applicant Company's Bank Account bearing No. 0726010100000259.

13. The Company Petition No. 63/Chd/J&K/2023 and COMP.APPL/112 (CH)2024 is allowed and disposed of accordingly. The case papers and folders may be consigned to the Record Room.

14. The Registry is directed to send/ e-mail copies of the order forthwith to all the parties including the counsel.

Sd/-  
**(Satya Ranjan Prasad)**  
**Member (Technical)**

Sd/-  
**(Dr. P.S.N. Prasad)**  
**Member (Judicial)**

July 01, 2024  
Vishesh