

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, BENCH-IV
APPEAL No.13/252/ND/2021.**

(In the matter of Section 252(3) of the Companies Act, 2013)

IN THE MATTER OF:

- 1. QUTAB ESTATES PRIVATE LTD
S-396, GREATER KAILASH, PART-I,
NEW DELHI -110048.APPELLANT NO.1**

- 2. MRS. SUCHITRA SETHIA,
DIRECTOR,
S-396, GREATER KAILASH, PART-I,
NEW DELHI -110048.APPELLANT NO.2**

- 3. PRADEEP SETHIA,
DIRECTOR
S-396, GREATER KAILASH, PART-I,
NEW DELHI -110048.APPELLANT NO.3**

VERSUS

- 1. REGISTRAR OF COMPANIES, DELHI & HARYANA
4TH FLOOR, IFCI TOWER,
61, NEHRU PLACE,
NEW DELHI-110019.RESPONDENT NO.1**

- 2. INCOME-TAX AUTHORITIES
CHAMBER NO.429-429
DELHI HIGH COURT,
SHER SHAH ROAD, NEAR INDIA GATE
NEW DELHI -11003RESPONDENT NO.2**

Order Delivered on: 11.03.2020

CORAM:

**DR. DEEPTI MUKESH, HON'BLE MEMBER (JUDICIAL)
MS. SUMITA PURKAYASTHA, HON'BLE MEMBER (TECHNICAL)**

Present:

**For the Applicant : Lokesh Kumar, CS.
For ROC Ms. Sweety Kumar Khattar, ARoC**

For Income-tax Deptt.: Mr.Zoheb Hossain Sr. Standing Counsel.

ORDER

PER Ms. SUMITA PURKAYASTHA (MEMBER TECHNICAL)

1. This Appeal has been filed by the Company named “Qutab Estates Private Limited” having its Regd. Office at S- 396, Greater Kailash, Part-I, New Delhi 110048 hereinafter referred to as “the Company” invoking the provisions of Section 252 (3) of the Companies Act, 2013 (the Act) for restoration of the name of the Company in the Register maintained by the Registrar of Companies (RoC), NCT of Delhi & Haryana. The company has authorised capital of the Appellant-company is Rs.1,00,000/- and paid up share capital of Rs.42,100/-.

2. As per the averments, M/s. Qutab Estates Private Limited was incorporated on 29.09.1989 as a private limited company and has its registered office at S-396, Greater Kailash, Part-I, New Delhi 110048 having CIN No.U70101DL1989PTC037868. Since incorporation the appellant-company has been carrying on business in real estates and immovable properties of all kinds and for this purpose to acquire by purchase , lease, licence, barter, exchange, hire or otherwise lands and immovable properties of any description or tenure or any interest in the same and to mortgage , lease, let,

hire, allot, turn to account, assign, pledge or otherwise dispose of the same on instalment basis or under hire-opurchase agreement or in other manner of all tyupes in whole or in parts. To act as promoters, builders, contactors, booking agents, commission agents, brokers, estate dealers, colonizers, landlord or proprietors, occupiers, lesser, and to purchase erect, construct, develop , lease, rent, reconstruct, alter, improve, pull down, deal in, decorate, furnish, maintain and turn to account lands, flats, buildings, bungalows, estates, farms, orchards, groves, nurseries, plantations, offices, cinema houses, hotels, motels, building roads, houses, factories, workshops, dams, canals, tanks, reservoirs, bridges, hydel projects, power houses, tunnels, culverts, drain channels, sewerages, gardens and such other pleasure grounds or works of every description and to sell ,licence, let, mortgage or otherwise dispose of the same in part or whole.

3. The name of the company was struck off on 31.05.2007 as per the provision of Section 560(5) of the Companies Act, 1956 vide its Notification/Public Notice No. ROC/DELHI/ 560(5)/SM/260 dated May 31st, 2007 published in the Official Gazette of India by the Registrar of Companies, NCT of Delhi.

4. The appellant-company had failed to file its Financial Statements and Annual Returns since Financial Year ended 31.03.1990 thereby giving rise to the surmise that the business of the company was not in operation.

However, the appellant -company filed Auditors Reports and Balance Sheet to ROC, after its name was struck off. Profit & Loss Account for F.Y. 2013-14 Showing 'Zero' profit, F.Y. 2014-15 Showing 'Zero' profit, F.Y. 2015-16 Showing 'Zero' profit, F.Y. 2016-17 Showing 'Zero' profit F.Y. 2017-18 Showing 'Zero' F.Y. 2018-19 Showing 'Zero' with the appeal.

5. The appellant -company admitted their default in carrying out the statutory compliances in filing Financial Statements and Annual Returns since 31.03.2007, but submits that the company has been in operations prior to date of striking off notice. In support of their Appeal, the appellant has submitted certified copies of its Annual Accounts for the F.Y. ended 2013-2014, 2016-17 and 2017-2018 with the petition and original submitted to the respondent.

6. In order to corroborate above submissions, the petitioner has placed the following evidence:

i) The Company has submitted original of Audited financial statements for the period ending 31.3.2015- 21.03.2016 with the respondent- ROC and submitted copies of the same with their petition.

ii) That the company filed the Balance Sheets and Annual Returns till the financial years ending 31.03.2014 to 31.03.2018.

iii) The Appellant Company attached copy of Sale Deed dated 06.11.1989 on which Stamp Duty of Rs.6,50,000 has been paid by the Appellant-company, in respect of purchase of immovable property bearing No.S-396, Greater Kailash, Part-I ,New Delhi 110048 alongwith valuation Report dated 11.12.2020 showing value of the property being Rs.26,06,580/- from Sharma & Associates, (Govt. approved Valuers, Architests & Engineer).

iv) Copy of Electricity Bill issued by BSS Rajdhani Power Ltd., in the name of Appellant-company for the period 18.10.2020 to 20.11.2020 for Rs.3940/-.

The Asstes, Inventories, Cash & Cash equivalent, expenses of the Appellant-company during 2017 – 2018 have been given as follows in the Audited Financial statements :-

Period	Inventories	Cash &	Short term	Other
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		Cash equi.	loan &Advances	expens es
Ending 31.3.2017	1515000	76653	95304	3500
Ending 31.3.2018	1515000	76653	95304	3800

The matter came up for hearing before the Bench on 03.03.2021 and the Order was reserved.

7. The provisions pertaining to restoration of the name of the company has been provided in Section 252 of the Companies Act, 2013 which includes that, if it is just and equitable to restore the name of the company in the Registrar of Companies, it may direct the RoC to restore the name in its Register.

8. The appellant has been able to satisfy this Bench that it has certain assets which necessitate and justify restoration of its name in the Register of Companies. A step as stringent as what has been taken at least requires an opportunity to the appellant to take remedial measures. Merely to disallow restoration on grounds of its failure to file annual returns would neither be just nor equitable. As per several decisions of various Courts it should only be in exceptional circumstances that Courts should refuse restoration where the company has been struck off for its failure to file annual return as that would be excessive or inappropriate penalty for that oversight.

9. Accordingly, the appeal is allowed subject to payment of costs of Rs. 25,000/- to the Prime Minister Relief Fund. The restoration of the Appellant Company's name in the Register will be subject to their filing all outstanding documents for the defaulting years as required by law and completion of all formalities, including payment of any late fee or other charges which are leviable by the respondent for the late filing of statutory returns. The name of the petitioner company shall then stand restored in the Register of the Registrar of Companies (RoC), as if its name of the company had not been struck off.

10. The direction for freezing the Bank Account(s) of the Appellant -Company, if on this ground, shall consequently be also set aside immediately to enable the company carry out its business operation. Compliance of this order for restoration shall be made by the respondent with all its consequential effects within one week of compliance by the appellant.

11. The appeal is allowed and disposed of accordingly.

12. Let the copy of the order be served to the parties.

Sd/-
(SUMITA PURKAYASTHA)
MEMBER (TECHNICAL)

Sd/-
(DR. DEEPTI MUKESH)
MEMBER(JUDICIAL)