

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-V
Appeal No. 188/252/ND/2020

IN THE MATTER OF:

An application under Section 252 of the Companies Act, 2013

AND

IN THE MATTER OF SCHEME OF REVIVAL OF

M/S The Address Realtors Private Limited

CIN: U45400DL2013PTC26160

Registered Office:

S No.- 301-P No-5,

LSC Surajmal Vihar,

Shahdara, Delhi-110092

Memo of Parties

1. Naveen Gupta

G-126,

Sector-9,

Noida-201301

Director and Shareholder of the Struck off Company

...Appellant No. 1

2. Subhash Chand Sharma

20 Raghunathapur

Noida, Dadri,

Gautam Buddha Nagar-245101

Director and Shareholder of the Struck off Company

...Appellant No. 2

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Versus

**1. Registrar of Companies,
NCT of Delhi & Haryana,
4th Floor, IFCI Tower,
Nehru Place,
New Delhi-110019
Email- roc.delhi@mca.gov.in**

...Respondent no. 1

**2. Income Tax Officer
Concerned Ward,
Through Principal Commissioner
At High Court Chamber No. 428-429
New Delhi-110019**

...Respondent no. 2

Order Reserved on: 05/07/2021

Order Delivered on: 09/08/2021

CORAM:

MR. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)

MR. KAPAL KUMAR VOHRA, MEMBER (TECHNICAL)

PRESENT- Mr. Rajeev Ahuja

ORDER

AS PER MR. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)

1. This Appeal has been filed by M/S The Address Realtors Private Limited and Naveen Gupta and Subhash Chand Sharma invoking the provisions of Section 252 of the Companies Act, 2013 for restoration of the name of the

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Appellant Company in the register maintained by the Registrar of Companies, NCT of Delhi & Haryana.

2. As per the averments, M/S The Address Realtors Private Limited was incorporated on 05.12.2013 by the Registrar of Companies, Ministry of Corporate Affairs, Delhi and has its registered office at S No-301-P No-5, LSC Surajmal Vihar, Shahdara, Delhi-110092 having CIN No. U45400DL2013PTC26160. The business of the appellant company is to carry on the business of Real estates and contractor of construction and interior work and to construct, execute, carry out and improve civil and construction work in India and in part of the world for railways, tramways, airways, docks, harbours, piers, wharves, canals, reservoirs, embankments, irrigation, reclamation, sewage, drainage, sanitary, water gas, electric light, telephonic, telegraphic and power supply work and to carry on the business of builders, civil contractors, civil engineers, surveyors, estimators and designers in all their respective branches and also to maintain land, building, industrial complexes, stores, factory sheds and buildings, warehouses, shops, estates and such other related business stipulates in any place in India or abroad and any interest therein and over on connected therewith, whether belonging to the company or not.

3. A sweeping action was initiated by the ROC at the instance of MCA in striking off the names of several Companies who had not been carrying on any business or operation for a period of two immediately preceding financial years and have not made any application within such period for obtaining the status



of dormant company under section 455 of the Companies Act, 2013. The appellant had failed to file its E-forms pertaining to Audited Balance Sheet, Statement of Profit and Loss Account with the report of Auditors and Directors and Annual Returns since incorporation to the Registrar of Companies thereby giving rise to the surmise that the business of the company was not in operation. Consequently, its name was struck off by the Respondent from the Register of Companies under Section 248 of the Companies Act, 2013 vide "Public Notice" dated 09.08.2019 and the order in form STK-7 dated 22.11.2019 informing about the dissolution of the company. They admit their default in carrying out the statutory compliances of the years from 2017 to 2018 but submit that the same was without any malafide intention.

4. The Company has filed the returns of the income with the Income Tax Authority latest for the financial year ended on 31.03.2019 on 25.10.2019.

5. The Appellant submits that the Appellant Company has been in continuous business operation and, has been regular in preparing its annual return and balance sheets and filing income tax returns with the competent authorities and has certain assets which necessitate restoration of its name in the record of ROC. In order to corroborate this submissions the appellant has placed before us the following evidence:

- i. Copy of Income Tax Returns for the year ended on 31.03.2019.



- ii. Copy of Financial Statements of the Company for the year ended on 31.03.2014 – 31.03.2019.
- iii. Copy of Statement of Profit & Loss reflecting Revenue from Operations is Rs. 3,769,000/- for the Financial Years ending 31st March, 2019. Copy of the Balance Sheet as on 31st March, 2019 reflecting current assets including Cash and Cash Equivalents, Trade Receivables, Short-term loans and advances and other current assets and current liabilities including trade payables, other current liabilities and short-term provisions.

Year ended	Statement of Profit & Loss reflecting Revenue from Operations
As on 31 st March, 2014	NIL
As on 31 st March, 2015	38,976,523
As on 31 st March, 2016	1,985,724
As on 31 st March, 2017	1,136,718
As on 31 st March, 2018	9,661,903
As on 31 st March, 2019	3,769,000

Balance Sheet							
	Year Ended						
	31.03.2014	31.03.2015	31.03.2016	31.03.2017	31.03.2018	31.03.2019	
Current Assets	Trade Receivables	NIL	429,789	21,347	24,153	NIL	NIL
	Short Term Loans and Advances	NIL	NIL	NIL	NIL	NIL	NIL
	Cash and cash Equivalents	75,000	110,352	26,647	8,853	199,460	569,079
	Other Current Assets	NIL	NIL	NIL	NIL	NIL	NIL
	Trade Payables	NIL	142,563	NIL	NIL	1,751,252	1,673,152
Current Liabilities	Other Current liabilities	10,000	270,000	79,742	3,692,697	5,452,529	4,535,529

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	Short-term provisions	NIL	14,702	14,702	14,702	44,698	70,625
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iv. Copy of Bank Statements of Current Account having with UCO Bank, Ghaziabad Account no. 28680210000304 in the name of Appellant Company for the period from 01.04.2018 to 16.07.2019 and IndusInd Bank, Ghaziabad Account no. 201002855296 in the name of Appellant Company for the period from 01.11.2018 to 30.10.2019 also placed on record showing operation in their account.

6. The Income Tax Department has not filed any reply.

7. RoC submits in its reply cum affidavit dated 14.07.2020 that the appellant company had submitted its last Annual Return and Balance Sheet pertain to the financial year that ended on 31.03.2016 and the office of Respondent issued the notice in the form of STK-1 dated 18.08.2019 intimating the company and directors of the company about the aforesaid defaults and providing them a fair opportunity to respond. As per records of the office of Respondent neither the company was carrying on any operation for a period of two immediately preceding financial years or obtained the status of a Dormant Company under section 455 of the Companies Act, 2013 and ROC prays to direct the company to file all pending Annual Returns and Balance Sheets and

other such documents of the subject company with the Registrar of Companies and award cost in favor of the Respondent no. 1 (Registrar of Companies).

8. 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.

9. The appellant has been able to satisfy this Bench that it has certain assets and the Company was in operation at the time of its name being struck off, 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.

10. Accordingly, **the Appeal is hereby allowed subject to payment of costs of Rs. 25,000/- to be deposited to the Prime Minister Relief Fund and Rs. 50,000/- to be deposited in the account of the Ministry of Corporate Affairs.** 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 appellant 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.

11. 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.

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

Sd/-

KAPAL KUMAR VOHRA
Member (T)

Sd/-

ABNI RANJAN KUMAR SINHA
Member (J)