

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT – V**

COMPANY APPEAL NO. 237/ND/2023

*Under section 252(3) of the Companies Act, 2013 read with Rule 87A of the
National Company Law Tribunal (Amendment) Rules, 2017*

IN THE MATTER OF:

M/s Havelock Properties Limited

(Wholly-owned subsidiary of Unitech Limited)

Through its Authorized Representative,

Mr. Harsh Niwas

100% shareholder of the Struck Off Company

M/s Sanyog Properties Private Limited

6 Community Centre,

Saket, New Delhi-110017

.... Applicant

Versus

REGISTRAR OF COMPANIES

NCT of Delhi & Haryana,

Ministry of Corporate Affairs,

Government of India

4th Floor, IFCI Tower, Nehru Place,

New Delhi-110019

.... Respondent No. 1

INCOME TAX DEPARTMENT

Ward 18(3) Delhi

CR Building,

IP Estate, Vikas Bhawan

New Delhi- 110002

.... Respondent No. 2

M/s Sanyog Properties Private Limited

(Struck Off Company)

Registered Office at:

6 Community Centre,

Saket, New Delhi-110017

.... Respondent No. 3

Order Delivered on: 03.07.2024

CORAM:

SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)

DR. SANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)

PRESENT:

- For the Applicant** : Mr. Siddharth Batra, Ms. Shivani Chawla, Mr. Chinmay Dubey, Mr. Rhythm Katyal, Mr. Pratyush Arora, Adv.
- For the IT Dept.** : Mr. Puneet Rai, Sr. Standing Counsel, Mr. Rishabh Nangia, Jr. Standing Counsel, Mr. Ashvini Kumar, Jr. Standing Counsel, Mr. Nikhil Jain, Adv.
- For the RoC** : Mr. Sumeet Kaul, Adv.

ORDER

PER: DR. SANJEEV RANJAN, MEMBER (TECHNICAL)

1. The present application has been filed by Applicant, **M/S Havelock Properties Limited** (a wholly-owned subsidiary of Unitech Limited) having 100 % shareholding in **M/s Sanyog Properties Private Limited**, under Section 252(3) of the Companies Act, 2013 for restoration of name of the company, which was struck down under Section 248 of Companies Act, 2013, by the Registrar of Companies, NCT of Delhi and Haryana (Respondent) vide Public Notice ROC-DEL/248(1)/STK5/2019/3789 dated 09.08.2019.

SUBMISSIONS OF THE APPLICANT

2. That the Company was incorporated on 03.05.2007 under the provisions of the Companies Act, 1956 as a private limited company and was registered with the Registrar of Companies, NCT of Delhi (RoC) vide Registration No. 162909 and the Certificate of Incorporation bearing CIN: U45400DL2007PTC162909 was issued to the Company.
3. The authorized share capital of the company is Rs. 5,00,000/- divided into 50,000 equity shares of Rs. 10/- each and the issued, subscribed & paid-up capital of the company is Rs. 5,00,000/- divided into 50,000 equity shares of Rs. 10/- each. The registered office of the company is situated at Basement 6 Community Centre Saket New Delhi South Delhi-110017. The application is well within the jurisdiction of this tribunal. The company is engaged in the real estate business.
4. The Company is continuously operative since its incorporation and also trying to maintain all the requisite documentation, as per the provisions of Companies Act, 2013.

5. The Applicant, M/s Havelock Properties Limited is a wholly owned subsidiary of Unitech Limited, which is under consideration before Hon'ble Supreme Court. New Board of Directors was nominated by the Union of India and the same is approved by the Hon'ble Supreme Court vide its order dated 21.01.2020. Pursuant to that, the Ministry of Corporate Affairs, Government of India, appointed an independent Board of Directors, vide its orders bearing No. Legal-10/01/2020 dated 21.01.2020, dated 22.01.2020 and dated 03.02.2020, which has since taken over the management of Unitech Limited and its affiliates, including the Applicant and the struck off Company, with effect from 21.01.2020. The New Board vide its resolution dated 17.03.2022 approved for revival/restoration of the names of the struck off Companies which are wholly-owned subsidiaries of the Applicant including the struck off Company, or subsidiaries of Unitech Limited or immediate/stepdown subsidiaries of the Applicant.
6. That the Company has been unable to file its Annual Returns and Balance sheets on the MCA Portal due to unavoidable circumstances and situations and due to misconduct of erstwhile management. Further, the company has not made any application for obtaining status of Dormant Company under Section 455 of the Companies Act, 2013, during such period. There was no malicious intention on the part of the company and the delay was truly unintentional.
7. Company being struck off, the applicant states that the company is facing huge roadblocks in the sale of its land and the further the stakeholder of the Unitech Limited and the Applicant rely on operations of the struck off Company, which have come to a halt owing to being struck off by the Respondent. Applicant has approached this Hon'ble Tribunal on instructions from the new Board of Directors of Unitech Limited and the mandate of the Government in view of the financial crunch being faced by them.
8. Owing to such failure, the RoC issued a notice OC-DEL/248(1)/STK5/2019/3789 dated 09.08.2019 in STK-5 to strike off the name of the Company. Further, the Form STK-7 bearing notice no. ROC/DELHI/248(1)/STK-7/6217 was issued on 29.10.2019, whereby the name of the Company was struck off from the Register of Companies.

9. The present Application is preferred under Section 252(3) of the Companies Act, 2013 for the Restoration of name of the Company in the Register of Companies maintained by the Registrar of Companies, NCT of Delhi & Haryana.
10. The Applicant has filed the amended memo of parties for making struck down company as a necessary party on 25.09.2023 in compliance of order dated 21.09.2023.
11. The Director of the struck off Company is untraceable therefore, the Applicant being a member under Section 2(55)(ii) of the Companies Act, 2013 has consented to move the present application before this Hon'ble Tribunal for restoration/revival of the company, on the register of companies maintained by Respondent as per section 252(3) of the Companies Act, 2013.
12. The Applicant has issued advance notice to the Registrar of Companies and Income Tax Department. Pursuant to that notice, Registrar of Companies, NCT of Delhi and Haryana (Respondent) had appeared and filed its reply dated 24.11.2023 and further submitted that they have no objection on revival subject to filing of all pending Annual Returns and Balance Sheets. Income Tax Department also appeared before this tribunal and submitted that they have no objection on restoration of the Company and the same is recorded vide order dated 12.06.2024.
13. The Applicant undertook to file all its pending annual returns and balance sheets with the RoC on restoration of the company. The Applicant also undertakes to file all the pending tax dues of the struck off company with the Income tax authorities as on date

CONTENTIONS OF RESPONDENTS

14. The Registrar of Companies (ROC) in its reply dated 24.11.2023 submits that the Company was incorporated on 03.05.2007 and there is no data or record which can be taken into consideration pertaining to the Annual Return and Balance Sheet filed by the Company to the office of RoC after the financial year ended on 31.03.2016 and further, the company has not obtained the status of a "Dormant Company" under Section 455 of the Companies Act, 1956. Hence, this office had reasonable cause to believe that the company was

not in operation, and therefore, the name of the company was considered for striking off from the Register of Companies.

15. Further, Registrar of Companies (ROC) submits that the action of striking off of the present company was legal and justified, as the Company was not carrying on any operations for a period of two immediately preceding financial years.

ANALYSIS/CONCLUSION

16. Heard the Ld. Counsel for the Applicant as well as Ld. Counsel for RoC and the Income tax Department. Records has been thoroughly perused. We observe that the Applicant Company in order to sustain his case, has placed reliance on the following documents: -

- a) Orders dated 20/01/2020 and 24/03/2021 passed by the Hon'ble Supreme Court in Bhupinder Singh v. Unitech Limited, Civil Appeal No.10856/2016.
- b) Resolution dated 17.03.2022 from the Unitech Limited for revival of its subsidiary company/ struck off company.
- c) Annual return filed by the Company for F.Y. 2015-2016.
- d) Income Tax Return for A.Y. 2016-17 and 2017-18.
- e) Balance sheet of the struck off Company for the F.Y. 2017.
- f) Board Resolution of the Applicant for revival of struck off company.

17. At this juncture, it will be advantageous to examine the requirement of Section 252(3) of the Companies Act, 2013 insofar as grant of relief to the applicant is concerned. The Section 252 (3) of the Act is reproduced below for better appreciation:

“252. Appeal to Tribunal. –

(1)

(2)

(3) *If a company, or any member or creditor or workmen thereof feels aggrieved by the company having its name struck off from the register of companies, the Tribunal on an application made by the company, member, creditor or workmen before the expiry of twenty years from the publication in the Official Gazette of the notice under subsection (5) of section 248 may, if satisfied that the company*

was, at the time of its name being struck off, carrying on business or in operation or otherwise it is just that the name of the company be restored to the register of companies, order the name of the company to be restored to the register of companies, and the Tribunal may, by the order, give such other directions and make such provisions as deemed just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off from the register of companies.”

18. In connection with the non-filing of statutory records, it is pertinent to refer to the findings of Hon’ble High Court of Delhi in the matter of **Mace Platronics Pvt Ltd Vs ROC**, reported in **(2010) 104 SCL 277 (Del)**, wherein it was held that:

“When the name of the company was struck off after following the prescribed procedure for non-filing of statutory records, even though the contentions of the company that the officials entrusted with responsibility of filing documents had failed to do so cannot be accepted yet since the company was a running company and the application had been filed in time, the court had power to restore the name of the company.”

19. It is noted that the applicant company is a wholly owned subsidiary of Unitech limited. The affairs of Unitech limited and its entities are subject matter of consideration with Hon’ble Supreme Court. In compliance of directions of Hon’ble Supreme Court and new board of directors was nominated by the Union of India. Vide order dated 24.03.2021, the new board of Unitech limited was made responsible for management and control of Unitech Group including all its affiliates, trusts, subsidiaries etc. a resolution framework prepared by new management also pending consideration of Hon’ble Supreme Court. The struck of company is also a part of resolution framework as subsidiary of Unitech Limited. In order to have a effective resolution framework, it is necessary that the name of the struck of company be restored.

20. Accordingly, this Petition is allowed. The restoration of the Company’s name to the Register of Companies maintained by the ROC, is hereby ordered, subject to the following directions namely-

- a) The restoration of the Company's name i.e., M/s Sanyog Properties Private Limited is subject to the payment of cost of Rs. 50,000/- (Rupees Fifty Thousand Only) to be paid to the Registrar of Companies, NCT of Delhi and Haryana. The name of the Applicant Company shall then, as a consequence, stand restored to the Register of the Registrar of Companies, as if the name of the company has not been struck off in accordance with Section 248(1) of the Companies Act, 2013.
- b) The Registrar of Companies, NCT of Delhi & Haryana (Respondent) is directed to restore the original status of the Applicant company as if the name of the company has not been struck off from the Registrar of Companies with resultant and consequential actions like changing status of the company from 'struck off' to "Active".
- c) The Applicant Company is directed to file all pending statutory document(s) including Annual Accounts and Annual Returns in default along with prescribed fee/additional fee/fine as prescribed under the Companies Act, 2013 within 45 days from the date on which its name is restored on the Register of Companies by the ROC, NCT of Delhi and Haryana (Respondent).
- d) The Applicant company is directed to submit a certified copy of this order to ROC, NCT of Delhi and Haryana within thirty days (30) of the receipt of this order.
- e) This order is confined to the violations, which ultimately leads to the impugned action of striking of the name of the Applicant Company, and it will not come in the way of Respondent to take appropriate action(s) in accordance with law, for any other violations/offences, if any, committed by the Applicant company prior or during the striking off of the Applicant Company.
- f) Resultantly, the present application i.e. **Company Appeal No. 237/252/ND/2023 stands allowed** with aforesaid terms.

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

File be consigned to records.

Sd/-
(DR. SANJEEV RANJAN)
MEMBER (T)

Sd/-
(MAHENDRA KHANDELWAL)
MEMBER (J)