

Note:

In order to benefit the Stake holders and petitioner this appeal u/s 252 of the Companies Act, 2013 is taken up for early disposal, to enable the concerned parties to have the benefit of CFSS Scheme which is due for closure on 31.12.2020. The order has been directly uploaded on the website of the National Company Law Tribunal.



Court Officer

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH - VI
Appeal No. 495/252/ND/2020

In the matter of:

**SUPER RESIDENCY PRIVATE LIMITED
(Through its Directors)**

Registered office:

**168, A.G.C.R. Enclave, Anand Vihar,
New Delhi- 110092**

...Appellant Company

Versus

**REGISTRAR OF COMPANIES,
NCT of Delhi and Haryana,
4th Floor, IFCI Tower,
61, Nehru Place,
New Delhi- 110019**

...Respondent

Order Delivered on: 29.12.2020

CORAM:

SHRI. P.S.N. PRASAD, MEMBER (JUDICIAL)

DR. V. K. SUBBURAJ, MEMBER (TECHNICAL)

Counsel for Appellant: Mr. Shikhar Garg, Advocate

Counsel for Respondent: Mr. M. Yadbhushana Rao and Mrs.
Sweety Kumar, AROC

ORDER

Per SH. P.S.N. PRASAD, MEMBER (JUDICIAL)

1. This is an appeal which has been preferred u/s 252 of the Companies Act, 2013 by the Appellant Company in relation to an order of striking off the name of the Appellant Company passed by the Respondent with effect from 08.08.2018 under the provisions of Section 248 of the Companies Act, 2013. Learned counsel for the Appellant represents that the Appellant Company was incorporated under the provisions of Companies Act, 1956 and has its registered office at 168, A.G.C.R. Enclave, Anand Vihar, New Delhi- 110092.

2. The Company is engaged in the business to promote, buy, sell or acquire in India or abroad and to carry on the business of builders and colonizers, contractors etc. Learned counsel for the Appellant represents that the Appellant Company has been active since incorporation and has also been maintaining all the requisite documentation, as per the provisions of the Companies Act, 1956/2013. However, compliance in relation to the provisions of Companies Act, 2013 with the Respondent RoC by filing annual returns and

financial statements has been omitted to be complied with but the said omission is not mala fide.

3. Upon notice to the Registrar of Companies (“RoC”), the RoC has filed its affidavit and reply. The Learned AROC for the RoC appeared and conveyed RoC’s no objections to restoration of the Appellant Company subject to terms.
4. Notice was duly served to the Income Tax Department. No report was filed and none appeared for the Income Tax Department at the time of hearing.
5. We have considered the plea of the Appellant and the representations of RoC. It is evident from the plea of the Appellant that it admits the default and questions the due process undertaken by the RoC in striking off the name of the Appellant Company as envisaged under Section 248 of the Companies Act, 2013. However, the Appellant is seeking restoration of its name in the register as maintained by RoC relying on the ground that the Appellant as of date is in active business and has been

preparing all its financial statements and in the circumstances, it is just that the name of the Company should be restored on the register of RoC as maintained by the Respondent. In order to sustain the said plea, the Appellant has placed before us the following documents:

- i. Copy of the Bank account statement of the appellant company at Union Bank of India having branch at Indirapuram, New Delhi for the period from 10.01.2018 to 10.07.2018.
 - ii. True Copies of Audited balance sheets for the Financial Years 2015-16 to 2017-18 with details of Cash and cash equivalents for an amount of Rs. 94,626/- as on 31.03.2018.
 - iii. Copy of the agreement dated 02.06.2018 entered by the appellant company for the interior decoration.
6. A perusal of the documents referred to in the paragraph above, reflects that the appellant has business operations which necessitate restoration of its name in the Register of Companies. The assumption of RoC that the company was

not in operation was merely on grounds of non-filing of the Statutory Returns by the appellant company. The Act itself provides for redressal of these defaults. 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.

7. Accordingly, the appeal is allowed subject to payment of costs of Rs. 50,000/- to the Prime Minister CARES 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

Appellant Company shall then stand restored in the Register of the RoC, as if the name of the company had not been struck off.

8. 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 to 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.

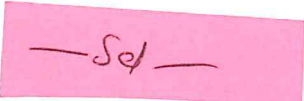
9. The application is disposed of accordingly. Let the copy of the order be served to the parties.'

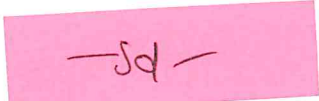
10. *That as NCLT Odisha Practitioners Association Bar, Cuttack has forwarded a representation to the Hon'ble President, NCLT the same is attached herewith. It is understood that similar situation is before every NCLT Bench. Therefore, Hon'ble President directed undersigned to request all Hon'ble Members to put their best efforts for*

Appellant Company shall then stand restored in the Register of the RoC, as if the name of the company had not been struck off.

8. 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 to 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.

9. The application is disposed of accordingly. Let the copy of the order be served to the parties.'


(DR. V.K. SUBBURAJ)
Member (Technical)


(SHRI. P.S.N. PRASAD)
Member (Judicial)