

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH

COURT - III

Appeal No.904/252/ND/2019

IN THE MATTER OF:

INCOME TAX OFFICER, WARD 22(4), NEW DELHI

Having his office at:

C. R. Building, I.P. Estate,

New Delhi – 110002.

...Appellant

VERSUS

1. REGISTRAR OF COMPANIES, DELHI

Office at: 4th Floor, IFCI Tower, 61,

Nehru Place, New Delhi – 110019

...Respondent No. 1

2. M/S SATYARTHI BUILDCON PVT.LTD.

Flat No.111, 3rd floor,

Pocket B-10, Sector-3, Rohini,

New Delhi-110085

...Respondent No. 2

3. SUMANT KUMAR SHARMA

Flat No.111, 3rd floor,

Pocket B-10, Sector-3, Rohini,

New Delhi-110085

...Respondent No. 3

4. KAMAL SHARMA

B-79, Mansa Ram Park

Mohan Garden,

New Delhi-110059

...Respondent No. 4

Order Delivered on 28.02.2023

CORAM:

SHRI. BACHU VENKAT BALARAM DAS, MEMBER, (JUDICIAL)

SHRI. ATUL CHATURVEDI, MEMBER, (TECHNICAL)

PRESENT-

For the Applicant: Mr. Puneet Rai, Senior Standing Counsel
along with Ms. Madhavi Shukla,

Mr. Ashvini Kumar, Junior Standing Counsels

For the ROC: Mr. Ssaaurabh Indura, Company Prosecutor

ORDER

PER: ATUL CHATURVEDI, MEMBER, (TECHNICAL)

1. This appeal has been filed by Income Tax Authority, invoking the provisions of Section 252 of the Companies Act, 2013, for restoration of the name of the Respondent No. 2 Company, M/s. Satyarthi Buildcon Pvt. Ltd. in the Register of Companies, maintained by the Registrar of Companies ("ROC"), Respondent No.1.
2. Service of notice was duly effected on the Respondents. Except the ROC, none appeared on behalf of the other Respondents. Therefore, this Tribunal directed the Appellant to make substituted service of notice by publication in the newspapers. In compliance of the said order, service has been affected through paper publication in the newspaper namely Financial Express (English), Delhi Edition and Jansatta (Hindi), Delhi Edition on 30.01.2020 and the applicant has also filed an affidavit of service along with proof of service dated 07.02.2020. Despite service and paper publication, none appeared on behalf of the other

Respondents to oppose the prayer made by the Appellant, on any of the dates of hearing.

3. The name of the Respondent no. 2 was struck off from the register of companies on 30.06.2017 vide Form STK-7.
4. Invoking the provision of Section 252 of the Act, the Income-Tax Department prayed for its restoration in order to carry out proceedings initiated against Respondent No. 2. As per the Information collected and received by the Income Tax Department, the Income of the Respondent Company has escaped assessment for Assessment Year 2012-13. The Respondent Company has not filed their Income Tax Return for Assessment Year 2012-13 and the income of the Respondent Company for Assessment Year 2012-13 has escaped assessment. The Respondent company had received contractual receipts amounting to Rs. 70,28,061/- from M/s. Paramount Towers Pvt. Ltd., on which TDS had been deducted under Section 194C of the Income Tax Act however, the Respondent Company has not filed their Income Tax Return for Assessment Year 2012-13. Proceedings were initiated against the Respondent Company and notice under Section 148 of Income Tax Act, 1961 was issued against the Assesse/Respondent Company on 25.03.2019 for the Assessment Year 2012-13.
5. As per the Demand Notice dated 30.11.2019, there is an outstanding demand of Rs. 4,82,920/- against the Respondent Company.

6. The Grievance of the Income Tax Department is that the name of the Respondent Company had been struck off by the ROC thus, seriously affecting the recovery of Respondent Company's tax liabilities. Therefore, for recovering the tax dues and for any further consequential proceedings against the company under the Income Tax Act, 1961, it is just and equitable and in public interest that the name of the Respondent Company be restored in the register of companies, as if the name of the company had not been struck off from the Register of Companies.
7. Ld. Counsel for the Income Tax submitted that the aforesaid facts necessitate restoration of the name of the Respondent Company in the Register of Companies to proceed further in accordance with law. In view of the grounds raised by the Appellant, being an aggrieved person, their prayer can be entertained u/s 252 of the Companies Act, 2013.
8. The Respondents despite notice and paper publication has not appeared before us and in view of the grounds raised by the Appellant, which remain unrebutted, the prayer of the Appellant merits consideration. The appeal is therefore allowed. The ROC is therefore directed to restore the name of Respondent 2, in its register and also proceed to take such other and further action against the Respondents in accordance with the statutory provisions.
9. We, however, make it clear that this Bench has only directed restoration of the name of the Respondent No. 2 Company in the Register of Companies, maintained by the ROC, on the basis of averments made in

the petition and have in no way endorsed or adjudicated about the Appellant's entitlement to recover any amount as tax etc. which shall be adjudicated by the Department and the Appellate Authorities, subject to the laws of limitation governing such recoveries. The appeal is disposed of in terms of the above. Compliance be made with the ROC within 30 days.

SD/-

**(ATUL CHATURVEDI)
MEMBER (TECHNICAL)**

SD/-

**(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**