

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENCH-IV, NEW DELHI
Appeal No.118/252/ND/2020.

IN THE MATTER OF:

GIRBAU INDIA PRIVATE LTD & Ors.
21/22, 2ND FLOOR,
D-15, SOUTH EXTENSION, PART-II
NEW DELHI 110 019.

.....APPELLANTS

VERSUS

REGISTRAR OF COMPANIES, DELHI & HARYANA
4TH FLOOR, IFCI TOWER,
61, NEHRU PLACE,
NEW DELHI-110019.

.....RESPONDENT

INCOME-TAX DEPARTMENT
HIGH COURT CELL- 428
BLOCK -I, DELHI HIGH COURT
NEW DELHI.

.....RESPONDENT

ORDER DELIVERED ON: 31.12.2020

CORAM:

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

PRESENT:

For the Appellant : Mr. Varun Jain,
Advocate For AROC : Ms. Mitika, AROC
For the IT Dept. : Mr. Kunal Sharma Sr. St. Counsel,
Ms. Zehra Khan Jr. St. Counsel

Puj

ORDER

PER MS. SUMITA PURKAYASTHA (MEMBER TECHNICAL)

1. This Appeal has been filed by the Company named "Girbau India Private Limited" having its Regd. Office at 21/22, 2nd Floor, D-15, South Extension, Part-II, New Delhi 110 019 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 Rs.65,00,000/- and paid up share capital of Rs.32,50,000/-.

2. As per the averments, M/s. Girbau India Private Limited was incorporated on 27.04.2012 as a private limited company and has its registered office at 21/22, 2nd Floor, D-15, South Extension, Part-II, New Delhi-110019 having CIN No.U29253DL2012PTC234887. Since incorporation, the appellant-company has been carrying on business of manufacturing, designing, engineering, consulting, fabricating, converting, installing, erecting, improving, reconditioning, servicing, supplying, trading, importing, exporting, site handling, commissioning, cleansing, repairing, buying, selling, exchanging, hiring



distributing, and/ or dealing in all types of laundry plants, Equipments and spare parts.

3. A sweeping action was initiated by the ROC at the instance of MCA in striking off the names of several Companies who had failed to file their Statutory Returns. The appellant had failed to file its Financial Statements and Annual Returns for the Financial Years 2014-15, 2015-16 and 2016-17 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 notification No. ROC/DELHI/248(5)/STK-7/4865 dated 08.08.20-18.

4. The appellant company admitted their default in carrying out the statutory compliances but submits that the same was due to lack of professional guidance, inadvertence and oversight. However, the appellant has submitted copies of its audited Financial Statements and Annual Returns for 2015-16, 2016-17 and 2017-18 with the petition and original submitted to the respondent.

5. The Appellant submits that the Appellant Company has been in continuous business operation, has been regular in preparing its annual returns 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 submission the petitioner has placed before us the following evidence:

i) The Company has submitted Copies of Audited financial statements for the period ending 31.03.2016, 31.03.2017 and 31.3.2018, along with Audited balance sheets for the above periods have been annexed with the petition and submitted to the respondent.

ii) The revenue from operations, Current Assets, Revenue from operations, balance in Banks, Trade payables for the company for Financial Years ending 31.03.2016, 31.03.2017 and 31.03.2018 have been given as follows in the Audited Financial statements :-

	Ending 31.3.2016	Ending 31.03.2017	Ending 31.03.2018
Fixed Assets	15,61,454	15,60,624	15,59,324
Revenue from operations	58000	64500	56800
Balance in Banks	1468706	1467876	1466576
Trade Payables	588332	588332	588332

iii) The Income department vide letter No. DCIT/Circle 10(1)/2020-21/3/10 dated 05.10.2020 issued "No Objection" for restoration of the Company's name in the Register of RoC. The



matter came up for hearing before the Bench on 15.12.2020 and the Order was reserved.

6. 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.

7. 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 the oversight.

8. Accordingly, the appeal is allowed subject to payment of cost 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.

9. 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.

10. The appeal is allowed and disposed of accordingly.

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

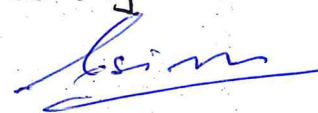
SD/-

(SUMITA PURKAYASTHA)
MEMBER (TECHNICAL)

SD/-

(DR. DEEPTI MUKESH)
MEMBER (JUDICIAL)

Pronounced today under Rule 151 of NCLT Rules, 2016 as the Hon'ble Member (Technical) Smt. Sumita Purkayastha is not holding the Court today.


(C.T. S. SINGH)
COURT OFFICER