

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
Appeal No.1131/252/ND/2018

IN THE MATTER OF:

Govind Radhe Real Estate Private Limited
Office at : C-47, Hari Nagar Extention,
Part-II Badarpur, New Delhi- 110044.

...Appellant

VERSUS

THE REGISTRAR OF COMPANIES,
NCT of Delhi & Haryana,
Having its office at :
IFCI Tower, 4th Floor,
61, Nehru Place,
New Delhi – 110019.

...Respondent No.1

Union of India, Ministry of Finance,
Department of Revenue
Through Income Tax Department
Having its office at :
Ward No.12(4), C.R. Building,
I.P. Estate, New Delhi- 110002.

...Respondent No.2

Order Delivered on: 29.10.2019

CORAM:

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

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

PRESENT- Mr. Sarvesh Bhardwaj, Advocate for Appellant.
Mr. M. Yadubhushana Rao, AROC
Mr. Sanjay Kumar, Advocate for IT Dept.

ORDER

Per (Dr.) 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(1) of the Companies Act, 2013. Learned authorized representative for the Appellant represents that the Appellant Company was incorporated under the provisions of Companies Act, 1956 and has its registered office at C-47, Hari Nagar Extention, Part-II Badarpur, New Delhi- 110044. The Company is engaged in the business of construction of Apartments, Flats, Shops, Kothies, Hotels, Restaurants, Pub, Cinema Halls, Multiplex, Complexes, Malls, Hospitals and Nursing Home's, Warehouses, Cold Storage's and other immovable properties/ buildings etc. Appellant also act as an agent for purchasing, selling and letting on hire, plot and houses whether multistoried, commercial and/ or residential building on commission basis. 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 Income Tax Return and financial

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

2. It is stated by appellant that the non-compliance with statutory filings is due to inadvertence, lack of awareness and is only a *bona fide* error. The Directors of the Appellant are law abiding citizens and had no intentions of circumventing the law. As such, the failure to file the annual returns or other documents of the Appellant with the Respondent was unintentional and is due to a genuine oversight and mistake.
3. Upon notice to the Registrar of Companies ("RoC"), the RoC has filed its affidavit on 30.01.2019 and stated that the company has been struck off from the register of the companies in terms of provision of Section 248(1) of the Companies Act, 2013 read with Rule 7 of the Companies Rules, 2016 vide notice dated STK-7 dated 08.08.2018. ROC has also submitted that the present company was struck off by ROC because the company had not filed its Financial Statement since financial year ended on 31.03.2015 due to which the Respondent had reasonable cause to believe that the Appellant Company was inactive and the action for striking off had been initiated.
4. We have considered the plea of the Appellants and the representations of RoC. It is evident from the plea of the Appellants 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 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:-

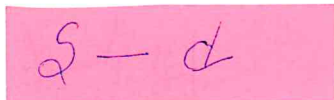
- i. Copies of the audited annual accounts/ balance sheets showing expenses, profit, borrowings and other liabilities for the financial years ending 31.03.2015, 31.03.2016 and 31.03.2017 respectively, with details of current investment to an extent of Rs.5,77,83,000/- as on 31.03.2017.
 - ii. Copy of Income-Tax Return Acknowledgements for the F.Y. 2015-16, 2016-17 and 2017-18.
 - iii. Attested copies of Bank statement from 01st April, 2014 to 16th March, 2019 showing continuous transactions in Canara Bank A/c No. 4147214000002.
5. On perusal of the documents referred to in the paragraph above, reflects that the appellant has investments/ transactions 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 Financial Statement since financial year ended on 31.03.2015. 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 financial statement would neither be just nor equitable in the eye of Law. 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 financial statements as that would be excessive or inappropriate penalty for that oversight.

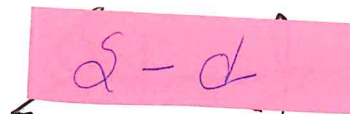
6. The notice was also issued to the Income-Tax Department for filing of reply in the matter in response of the said notice the ITO Ward No. 10(3) however; no specific objections/issues have been raised by the Income-Tax Department to the revival of the company.
7. The Company has substantial investments. The act of the striking shall jeopardize the economic interest of the company and its shareholders.
8. Having regard to the above the appeal is allowed subject to payment of costs of Rs. 35,000/- (Rupees Thirty-Five Thousand only) 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 statements and 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.

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 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.
10. The petition is disposed of accordingly.
11. Let the copy of the order be served to the parties.



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



**(Dr.) P.S.N.PRASAD
MEMBER (JUDICIAL)**

Harleen Kaur