

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (COURT- I) CHENNAI**

ATTENDANCE CUM ORDER SHEET OF THE HEARING
HELD ON **28.06.2024** THROUGH VIDEO CONFERENCE

**PRESENT: HON'BLE SHRI. SANJIV JAIN, MEMBER (JUDICIAL)
HON'BLE SHRI VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)**

Application No : Comp.Appeal/3/2024
Petition No :
Name of Petitioner : Thambidurai Shanmugarajan
& Vs
Name of Respondent : RoC, Chennai
Section : Sec 252 of CA, 2013

ORDER

Present: None for Applicant.

Ms. Nandhini Agarwal, Ld. Counsel for RoC.

Vide separate order pronounced in open Court, the Appeal is allowed with cost of Rs. 2.0 lakhs. The Company Kans Builders Private Limited is restored.

File be consigned to records.

-sd-
[VENKATARAMAN SUBRAMANIAM]
MEMBER (TECHNICAL)

MS

-sd-
[SANJIV JAIN]
MEMBER (JUDICIAL)

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

Comp. Appeal/03/CHE/2024

(Under Section 252(3) of the Companies Act, 2013)

In the matter of Kans Builders Private Limited

Mr. THAMBIDURAI SHANMUGARAJAN,
SHAREHOLDER OF M/S. KANS BUILDERS PRIVATE LIMITED,
No.14, Kutcherry Road, Mylapore,
Chennai-600 004

... Appellant

-Vs-

REGISTRAR OF COMPANIES, CHENNAI
Block No.6, B Wing
2nd Floor, Shastri Bhavan,
26, Haddows Road,
Chennai – 600 006

... Respondents

Order pronounced on 28th June, 2024

Present:

For Appellant : Savitha G, Advocate

For Respondent: Avinash Krishnan Ravi, Advocate

CORAM

SANJIV JAIN, MEMBER (JUDICIAL)
VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

ORDER

(Hearing Conducted through VC)

This Appeal has been filed by **Mr. THAMBIDURAI SHANMUGARAJAN,**
in the capacity as a shareholder/director of the Company namely, **M/s.**
KANS BUILDERS PRIVATE LIMITED(HEREINAFTER, THE COMPANY) under

Section 252(3) of the Companies Act, 2013, being aggrieved against the order of strike off carried out by the Respondent namely, the **Registrar of Companies, Chennai (hereinafter RoC, Chennai)** under Notification dated 14.02.2022 (STK7/ROC/CHM/S.248(1)/2021) seeking thereof to restore the name of the Company in the Register maintained by the Respondent/RoC.

2. The brief facts of the matter are tabulated below:-

S. No.	PARTICULARS	FACT
a)	Name of Company	M/s. Kans Builders Private Limited
b)	CIN No.	U45500TN2017PTC119775
c)	Date of Incorporation	30/11/2017
d)	Registered Office Address	N0.14, KUTCHERRY ROAD, MYLAPORE, Chennai, CHENNAI, Tamil Nadu, India, 600004
e)	Reason of Strike Off	Non filing of Financial Statements for the Financial Years 2018-19 to 2020-21
f)	Date of issue of show cause notice STK-5	22.12.2021
g)	Date of Publication of STK-7 in official Gazette	14.02.2022

3. It is stated that, the Appellant is a shareholder and director of Kans Builders Private Limited. Kans Builders Private Limited was incorporated on 30.11.2017. The main object of the Company is *to promote, construct or erect houses, buildings, apartments, villas, flats, offices,*

shopping complexes or works of every description on any land of the company or upon any other lands or property and to pull down, rebuild, develop, enlarge, alter and improve existing buildings, structure, houses or properties etc. Details of the main object are set out in the Memorandum of Association which has been filed along with the typed set of documents.

4. It is stated that the Company had been actively engaged in business since its inception and the Company was regularly filing its Income Tax Returns and the GST Returns with the Income Tax Department and the GST Department respectively. It is averred that the Company has paid Income Tax of Rs.18,000 for the Assessment Year 2019-2020, Rs.25,263/ for AY2020-2021 and Rs. 37,739 for the AY 2021-2022. The Copies of the Income Tax Return Acknowledgments are annexed as **ANNEXURE 3**.

5. It is stated that the Appellant had entrusted the work of compliance to a team of consultants who failed to submit the returns on time and this fact was not informed to the Appellant or other Directors of the Company. The negligence on the part of the financial and secretarial consultant on this caused this critical problem for the Appellant.

6. It is stated that, the Company was not in a position to file its annual returns and balance sheet with the Respondent only because of negligence on the part of the consultants who failed to the same. It is reiterated that the Bank account statements of the company would show that the Company is actively conducting its business operations and the bank account statements are annexed as *Annexure-5* of the type set documents.

7. It is stated that, in the event of revival and restoration of Kans Builders Private Limited name in the register maintained by Respondent, the requisite and outstanding statutory documents along with fees, as applicable will be filed.

8. It is stated that, if the present Appeal is not allowed and the name of the Company is not restored in the register of Respondent, then its shareholders will suffer irreparable loss and hardship and will be highly prejudiced.

9. Upon notice, the Respondent/RoC has filed the Report. It is stated that, the Appellant's Company was identified by the Respondent Office

for action under Section 248 for non-filing of Financial Statements as per the provisions of Companies Act, 2013. It is further stated that, the Respondent office had sent letters inquiring whether the Company is carrying on its business or in operation under Section 248(1) and Section 248(5) of Companies Act, 2013. Thereafter completing the due procedure, the Respondent finally struck off the Company's name under Section 248(5) of the Companies Act, 2013, vide order Public Notice No.STK7/ROC/CHN/S.248(1)/2021 dated 14.02.2022.

10. It is stated that, the Company Kans Builders Private Limited has filed Financial Statements and Annual Returns with the Registrar of Companies upto 2017-2018, thereafter failed to file financial statements and Annual returns. It is the statutory duty of every company and its directors to file the financial statements for every financial year with the RoC. In this case, the company has failed to do so.

11. We have considered the plea of the Appellant and the Respondent/RoC as well. The Appellant is seeking restoration of the Company name in the register as maintained by RoC. In order to

sustain the said plea, the Appellant has placed the followings as Annexures in the Appeal typeset of documents:

(i) Copy of Income Tax Returns Acknowledgment for the AY – 2019-20 to AY 2021-2022 **Annexure-3.**

(ii) Copies of GST Returns of the Company, **Annexure- 4.**

(iii) Copy of bank statement of the Company from 01.04.2017 to 31.03.2022 – **Annexure- 5**

12. From the documents annexed along with the Appeal it is seen that the Company has filed income tax for the Assessment years 2019-2020 to Assessment year 2021-2022. The Bank Account Statement of the Company from 01.04.2017 to 31.3.2022 would show that the Company was active even after the Company's name having been struck off from the Register maintained by the Respondent. Hence, this Tribunal is of the view that it is '**just**' to restore the name of the Company in the register maintained by the Respondent – Registrar of Company.

13. Taking into consideration the provisions of Section 252 of the Companies Act, 2013 which vests this Tribunal with discretion to restore the Company whose name has been struck off, keeping in consideration that it is just to do so, we restore the name of the

Company in the register. The Application is allowed subject to the following directions namely:

- (i) The Registrar of Companies/Respondent is ordered to restore the original status of the Company viz. **Kans Builders Private Limited** as if the name of the Company has not been struck off from the Register of Companies with resultant and consequential actions like changing the status of Company from “**strike off**” to “**Active**”
- (ii) The Company shall within a period of 30 days from the restoration of the Appellant Company’s name in the register being maintained by the RoC, the Appellant will file *inter alia* its annual returns and balance sheets as well other compliances statutorily required to be made under the Companies Act, 2013 for the period from which there has been default with requisite charges/fees as well as additional fee/late charges.
- (iii) That the Restoration of the Company’s name is also subject to the payment of cost of **₹2,00,000/- (Rupees Two Lakhs only/-)**, as volunteered by the Appellant, through online payment in www.mca.gov.in under miscellaneous fees by mentioning the particulars as “payment of cost for revival of Company”.
- (iv) Till all compliances are made by the Company, the Company shall not alienate or dispose of any of its valuable assets.
- (v) It is further observed that by virtue of this order of restoration of the name of Company in the register it will not entitle the Directors of the Company whose names in case have been disqualified by virtue of provisions of Section 164 of the Companies Act, 2013 by the Respondent/RoC automatically to be restored to directorship except in accordance with law.
- (vi) An affidavit of compliance of the aforesaid directions shall be filed by the Appellant within a period of 2 months from the date of this order.

(vii) Further, this order allowing the Application shall also not circumscribe the power of the 1st Respondent to proceed against the Appellant Company and its Directors as mandated for alleged late filing of any forms, documents, returns and such other compliance under the provisions of Companies Act, 2013.

14. This Appeal stands **allowed** on the aforementioned terms.

-Sd-

VENKATRAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

-Sd-

SANJIV JAIN
MEMBER (JUDICIAL)

Kishore P