NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

Company Appeal No. 112/252(ND)/2022

IN THE MATTER OF:

Income Tax Officer-Ward 1 (1), New Delhi
Having his office at:
Central Revenue Building
I.P Estate, New Delhi-110002 **...Appellant**

Versus

1. **The Registrar of Companies**
   Having his office at:
   4th Floor, IFCI Tower,
   61, Nehru Place, New Delhi-110019 **... Respondent No. 1**

2. **M/s Amrapali Zodiac Developers Private Limited**
   a) Through Shri R. Venkataramani, Sr. Advocate
   Court receiver,
   Apartment No. D-1, 6,
   Dr. Abdul Kalam Road
   New Delhi-110011

   b) 307, 3rd Floor Nipun Towers,
   Community Centre Karkardooma
   New Delhi - 110092 **... Respondent No. 2**

3. **Sh. Vinay Kumar**
   Ex-Director, E-49, Shop No.3
   Ground Floor, Jawahar Park,
   Laxmi Nagar, Delhi- 110092 **... Respondent No. 3**

4. **Sh. Sumit Kumar**
   Ex-Director, E-49, Shop No.3
   Ground Floor, Jawahar Park,
   Laxmi Nagar, Delhi- 110092 **... Respondent No. 4**

Section: 252 of Companies Act, 2013

Order Delivered on: 17.03.2023

CORAM

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)

SH. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:

For the Appellant	**:** Mr. Zoheb Hossain, Sr. Standing Counsel; Mr. Parth Semwal & Mr. Vipul Agrawal, Jr. Standing Counsel
For the Respondent	**:** Mr. Ssaurabh Indura, Company Prosecutor for ROC, Delhi

ORDER

PER: SHRI. ASHOK KUMAR BHARDWAJ, MEMBER (J)

The captioned Appeal under Section 252(1) read with Section 252(3) of the Companies Act, 2013 has been preferred against the action of the Registrar of Companies (RoC) in striking off the name of M/s Amrapali Zodiac Developers Private Limited **("the Company")** from the Register of Companies.

2. As has been espoused by the Appellant that the struck off Company is an unlisted Private Limited Company incorporated on 18.12.2009 under the Companies Act, 1956 with CIN No. U70200DL2009PTC197161. The Authorised Share capital of the Company is Rs.13,00,00,000/- and the paid-up capital of the Company is Rs.1,00,00,000/-. The registered office of the Company is at 307, 3rd Floor Nipun Towers, Community Centre Karkardooma, New Delhi-110092, which is within the territorial jurisdiction of this Tribunal.

3. According to the Appellant, the Company had an income of Rs.22,61,87,431/- and Rs.13,07,19,492/- for A.Y. 2016-17 and 2017-18 respectively, and has escaped from assessment for the same. The Company failed to file its ITR as required, in accordance with provisions of the Income Tax Act, 1961 for both the Assessment Years (ibid). A notice dated 31.03.2021 under Section 148 of the Income Tax Act (Annexure A-1 to appeal) was issued by the Appellant to the Company directing it to file its return of income which the Company failed to comply with. It is further stated by the Appellant that a demand of Rs. 10,000/- for A.Y. 2010-11 and Rs. 4,77,410/- for A.Y. 2015-16 is outstanding against the Company as reflected in ITBA Portal.

4. The Appellant had also issued notice u/s 142(1) of the Act regarding Assessment Years 2016-17 and 2017-18 against the Company giving it an opportunity to furnish accounts and other information sought by the Assessing Officer which the Company again failed to comply with.

5. During the course of enquiry, the Assessing Officer found that the Company had been struck off from the register of the RoC Delhi and Haryana. The ROC initiated proceedings under Section 248 of the Companies Act, 2013 and struck off the name of the Company from its Register vide Notice No. ROC/DELHI 248(5)/STK-7/4865 dated 08.08.2018. The name of the Company appeared at serial no. 1411 of the

list of companies, whose names were struck off due to default in statutory compliances mentioned in the notice (ibid).

6. The salient plea espoused by the Appellant is that the name of the Company could be struck off by the RoC without any proper enquiry and neither the Appellant nor superior officers were informed or made privy qua the proceedings for the removal of the name of the Company from RoC which is in direct contravention of Rule 7(2) of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 thereby requiring RoC to intimate concerned Income Tax Authorities.

7. It is further contended by the Appellant that the Income Tax Department is an aggrieved party and a creditor within the meaning of Section 252(1) r/w Sec 252(3) of the Companies Act, 2013, and great prejudice will be caused to Revenue and public at large if the name of the Respondent is not restored back.

8. Ld. AROC submitted before this Tribunal on 03.03.2023 that the RoC has no objection to the restoration of the Company to the Register of Companies. There was no appearance on behalf of the Respondent Nos. 2, 3 and 4 despite service of notice by substituted mode i.e., publication, thus they were set ex-parte in terms of order dated 11.11.2022.

9. After hearing the submission of both the parties and perusing the documents available on record, it is observed the name of the company

was struck off from the register of ROC on 08.08.2018 and the present appeal was filed on 16.05.2022. Thus, a doubt arises, whether the appeal is within the prescribed period of limitation and maintainable?

10. In this regard, it may be pertinent to make a reference to Section 252(1) of the Companies Act, 2013, which reads thus: -

> ***"252. Appeal to Tribunal**.— (1) **Any person** aggrieved by an order of the Registrar, notifying a company as dissolved under section 248, may **file an appeal to the Tribunal within a period of three years from the date of the order of the Registrar** and if the Tribunal is of the opinion that the removal of the name of the company from the register of companies is not justified in view of the absence of any of the grounds on which the order was passed by the Registrar, it may order restoration of the name of the company in the register of companies:*
>
> *Provided that before passing any order under this section, the Tribunal shall give a reasonable opportunity of making representations and of being heard to the Registrar, the company and all the persons concerned:*
>
> *Provided further that if the Registrar is satisfied, that the name of the company has been struck off from the register of companies either inadvertently or on the basis of incorrect information furnished by the company or its directors, which requires restoration in the register of companies, he may within a period of three years from the date of passing of the order dissolving the company under section 248, file an application before the Tribunal seeking restoration of name of such company.*
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> *(Emphasis Supplied)*

11. On perusal of the above, it is clear that any person aggrieved by an order of the Registrar (ROC) can challenge the striking-off action before this Tribunal within three years from the date of the order.

12. In the instant case, the appeal was filed on 05.05.2022, whereas the name of the company was struck off from the register of companies on 08.08.2018, which is much after the expiry of the limitation period of three years. However, we may not be oblivious of the fact that due to Covid-19, in **Suo Motu Writ Petition (C) No. 3 of 2020**, the Hon'ble Supreme Court had excluded the period from 15.03.2020 to 01.03.2022 from the statutory period of limitation for all purposes, the relevant excerpt of which is reproduced below:

> *"5. Taking into consideration the arguments advanced by learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of the M.A. No. 21 of 2022 with the following directions:*
>
> *I....*
>
> *II....*
>
> *III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.*

13. Further the Hon'ble NCLAT in **Company Appeal (AT) (Insolvency) No. 936 of 2021 in the matter of M/s. Essjay Ericsson**

Private Limited vs. M/s. Frontline (NCR) Business Solutions Pvt. Ltd

dated 10.01.2022, has specifically held thus:

> *"12. When the Hon'ble Supreme Court in exercise of jurisdiction of Article 142 of the Constitution of India has directed for extension of period of limitation, a litigant is entitled for the benefit of extended period of limitation and if the petition, application, suit, appeal etc. are filed within extended period of limitation, the application, appeal, suit etc. shall be treated within period of limitation. When the Hon'ble Supreme Court has granted extension of period of limitation, it cannot be said that appeal, suit or application which is filed during the relevant period is barred by time so as requiring an Application under Section 5 of the Limitation Act, 1963 for condonation of delay. When the appeal, suit, application etc. is filed within period of limitation as extended by the Hon'ble Supreme Court, there does not arise any occasion to pray for condonation of delay for filing suit, application or appeal. However, if a litigant being over cautious files an Application under Section 5 of the Limitation Act, 1963, no exception can be taken to that proceeding but there is no requirement in law to file an application under Section 5 of the Limitation Act, 1963.*
>
> *13. Further, when an application, appeal or suit etc. is filed within extended period of limitation as directed by the Hon'ble Supreme Court, as noted above, there is no discretion left with the Court or Tribunal to hold that application, appeal or suit is delayed when there is no requirement of filing application under Limitation Act. In*

above circumstances, discretion of Court to consider sufficient cause does not arise."

14. In the normal circumstances, the limitation qua the present appeal could have expired on 07.08.2021. However, in view of the decision of Hon'ble Supreme Court (Supra), the Appellant has got the benefit of the extended limitation period, as per which it had 90 days from 01.03.2022 to file the present appeal. Since the present appeal is filed on 05.05.2022 i.e., which is within 90 days from 01.03.2022 therefore, the appeal is deemed to have been filed within prescribed period of limitation.

15. As regards to the maintainability of the application, as evident from the contents of Section 252(1) of the Companies Act, 2013 any person can file an appeal against the order of striking off of the Company passed by the ROC. In such circumstances, we find the present Appeal to be maintainable. Even otherwise also, the Appellant falls in the category of Creditor qua the Company struck off i.e., the Respondent No. 2. The plea raised by the Appellant regarding the violation of Rule 7 (2) of the Companies (removal of names) Rules, 2016 is neither nixed nor opposed by the ROC i.e., Respondent No. 1. As has been noticed hereinabove, the Respondent No. 1 conceded the present appeal. In terms of the provision of Rule 7 (2) of the Companies (removal of names) Rules, 2016 (ibid), the Registrar of Companies while publishing notice under Section 7 (1) of the Rules should intimate inter alia the Income Tax Authorities. The Rule reads thus:

"***Manner of publication of notice.***

7. (1) ….

(2) The Registrar of Companies shall, simultaneously intimate the concerned regulatory authorities regulating the company, viz., the Income-tax authorities, central excise authorities and service-tax authorities having jurisdiction over the company, about the proposed action of removal or striking off the names of such companies and seek objections, if any, to be furnished within a period of thirty days from the date of issue of the letter of intimation and if no objections are received within thirty days from the respective authority, it shall be presumed that they have no objections to the proposed action of striking off or removal of name."

16. The provision qua the intimation regarding notice to struck off a company in terms of the provisions of Section 248, to the Income Tax Authorities cannot be without any object and intent. The same cannot be described as a mere ceremony or formality. Once, the statutory Rules entail the requirement of intimation to Income Tax Authorities seeking their objection in respect of the removal of the name of a Company from the register of companies, the ignorance/omission to adhere to the same amounts to prejudice to the interest of the Regulators/Income Tax Authorities to whom the intimation with an opportunity to put forth its objection is provided to be issued and vitiates the order of removal.

17. The Appellant has filed its present appeal mainly with the purpose of recovering the government dues and the appeal has not been opposed by the ROC. **Ergo, the Appeal is allowed and the impugned order being passed in violation of the Rules (ibid) is quashed.**

18. The ROC is directed to restore the name of the Company namely, M/s. Amrapali Zodiac Developers Private Limited in its Register, as if its name had not been struck off. The ROC is also directed to take other penal action against the Respondents for the default, if any, in accordance with the statutory provisions and law.

19. Let a copy of the Order be supplied to the parties.

Sd/-	**Sd/-**
(L. N. GUPTA) **MEMBER (T)**	**(ASHOK KUMAR BHARDWAJ)** **MEMBER (J)**