

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI COURT-III (SPECIAL BENCH)**

**ITEM No. 401**

IA-(Comp.Act)- 249/2022

And

130/252/ND/2021

**IN THE MATTER OF:**

**Mr. Udit Rathi**

**..... Appellant**

**VERSUS**

**ROC, Delhi.**

**..... Respondent**

**Order under Section 252 of the Companies Act, 2013.**

**Order delivered on 14.09.2023**

**CORAM:**

**SHRI MANNI SANKARIAH SHANMUGA SUNDARAM  
HON'BLE MEMBER (JUDICIAL)**

**SHRI ATUL CHATURVEDI  
HON'BLE MEMBER (TECHNICAL)**

**PRESENT:**

For the Appellant :

For the Respondent :

**ORDER**

Order pronounced in open court vide separate sheets.

**130/252/ND/2021 stands allowed and disposed of.**

**IA-(Comp.Act)- 249/2022 stands dismissed and disposed of.**

**-SD-**

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

**-SD-**

**(MANNI SANKARIAH SHANMUGA SUNDARAM)  
MEMBER (JUDICIAL)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI, COURT-III (SPECIAL BENCH)**

IA-(Comp.Act)- 249/2022

And

Appeal No. 130/252/ND/2021

Under Section 252 of the Companies Act, 2013.

**IN THE MATTER OF:**

**Mr. Udit Rathi**

**R/o** 26A, Sadhna Enclave, New Delhi-110017.

**Member of M/s. Archit Securities Private Limited**

*Having Its Registered Office at:*

C-88, Gali No. 8, Jyoti Colony, Shahdara, Delhi-110032.

**..... Appellant**

**VERSUS**

**REGISTRAR OF COMPANIES, DELHI**

4<sup>th</sup> Floor, IFCI Tower, 61,

Nehru Place, New Delhi-110019.

**..... Respondent**

**Order Pronounced On: 14.09.2023**

**CORAM:**

**SHRI MANNI SANKARIAH SHANMUGA SUNDARAM, HON'BLE  
MEMBER (JUDICIAL)**

**SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)**

**APPEARANCES:**

For the Appellant : Mr. Dhawan, Mr. Karan Gandhi, Mr. Shivam  
Gautam, Advs.

For the Respondent : Ms. R Mitika, Asst. RoC on behalf of RoC, Delhi

**ORDER**

**PER: ATUL CHATURVEDI, MEMBER (TECHNICAL)**

**Mr. Udit Rathi vs. ROC, Delhi**

**IA-(Comp.Act)- 249/2022 and Appeal No. 130/252/ND/2021**

**Date of Order: 14.09.2023**

1. This is an Appeal filed by Mr. Udit Rathi, Member of M/s. Archit Securities Private Limited, the Appellant on 03.09.2021 before this Tribunal under Section 252 of the Companies Act, 2013, seeking restoration of the name of the company, which was struck off by the Registrar of Companies, NCT of Delhi and Haryana vide notice dated 29.10.2019 numbered as ROC/DELHI/248(1)/STK-7/6217 appearing at serial no 725 of the notice dated 29.10.2019.

2. **Facts of the Case:**

- i. The Appellant seek the restoration of the Company “M/s. Archit Securities Private Limited” having CIN: U74899DL1995PTC070876. The Company was originally incorporated on 18.07.1995 under the provisions of the Companies Act, 1956 as a Private Limited Company within the territorial jurisdiction of NCT of Delhi & Haryana. The Authorised Share Capital of the Company was Rs. 17,37,00,000/- (Rupees Seventeen Crore Thirty Seven Lakh Only) divided into 1,73,70,000 equity shares of Rs. 10/- each. The Issued, Subscribed and Paid-up Share Capital of the Company was Rs. 12,23,96,940/- (Rupees Twelve Crore Twenty Three Lakh Ninety Six Thousand Nine Hundred and Forty Only) divided into 1,22,39,694 equity shares of Rs. 10/- each. The Registered Address of the Company is C-88, Gali No. 8, Jyoti Colony, Shahdara, Delhi-110032. Therefore, this Bench has jurisdiction to entertain this Appeal.
- ii. The Company was a Non-Banking Financial Company/ Institution. The RBI issued a certificate of Registration bearing No. B.14.02191 dated 08.05.2002 to carry on the business of No-Banking Financial Institution. Further, the RBI vide letter dated 26.09.2019 cancelled the certificate of Registration bearing No. B.14.02191 dated 08.05.2002.
- iii. The Company has 14 Equity Shareholders as on 31.07.2021 and the details representing the shareholders and their shareholding pattern is filed along with the Appeal. The Company was

operative and continues to function as can be seen from the Financial Statements of the Company for the F.Y. 2018 (year ended 31.03.2018) which is filed along with the Appeal. The Company had assets in the form of securities of various listed and unlisted companies, the details are filed along with the Appeal.

- iv.** The Company received a notice dated 20.07.2019 wherein the Respondent inter alia stated as per its record that the Company is not carrying on any business or operation for the period of two immediately preceding Financial Years and has not made any application within such period for obtaining the status of a dormant company under Section 455. The Company vide its letter dated 17.08.2019 has duly replied to the notice dated 20.07.2019, that the Company was carrying on its business activities which was evident from the bank statements and the income tax return for the year 18-19 annexed with the reply dated 17.08.2019. However, despite replying to the notice and furnishing proofs for carrying on the business of the Company, the Respondent proceeded with striking off the Company's name from the register of companies vide its notice dated 29.10.2019 numbered ROC/DELHI/248(1)/STK-7/6217, the name of the Company is appearing at serial No. 725 of the list attached to the notice dated 29.10.2019.
- v.** If the Company remains struck off and never revived, it will be an unnatural death to the Company and it will strike a very hard blow to its contributors, which will be prejudice to their rights and against the natural justice. The Company was operative and carrying on its business and operation effectively and efficiently in the previous Financial Years and therefore the strike off of the business and operation of the Company has deprived the efficient operation of the Company. The Company maintained the current account with Axis Bank in the name of the Company "Archit Securities Private Limited" bearing account

number "913020012694645", to carry on day-to-day business transactions of the Company effectively.

- vi.** The Appellant avers that the non-filing of accounts of the Appellant Company was occasioned on the account of various internal issues. The Directors of the Company did not have professional acquaintance or expertise in law and could not comply with the provisions of law as applicable to the Company pursuant to the provisions of the Companies Act, 2013. For this reason, the Company could not adhere to the legal requirements and prerequisites of the law which was completely unintentional.
- vii.** The Appellant completely admits the default made by them for the non-filing to the documents with the Registrar of Companies in pursuant to the annual filing of various documents, further submits that it could not have oversight for the filing and was completely due to aforesaid reasons, due to which the Respondent was of an impression that the Company has been non-operative and has not commenced its business from the time of incorporation of the Company or has not been carrying its business or operation for a period of two immediate preceding Financial Years. The Appellant apologises that it has failed to file necessary returns with the Respondent within stipulated timelines and shall cure the defaults as soon as possible.
- viii.** The Company also applied with the Central Board of Direct Tax, Ministry of Finance, Government of India under the Vivad Se Vishwas Act, 2020 (3 of 2020) read with the Direct Tax Vivad Se Vishwas Rules, 2020 via Acknowledgement Number: 228505740270121 on 27.01.2021 and revised thereafter for its tax arrears. A copy of the Acknowledgement dated 27.01.2021 and 08.04.2021 is filed along with the Appeal. The Appellant Company have filed reply Affidavit dated 07.12.2022 and stated that they paid to the Income Tax Department a sum of Rs. 68,13,560/- under the "VIVAD SE VISHWAS SCHEME 2020"

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vide order dated 18.01.2022 towards full and final settlement (Form-5) and confirmed that there is no pending income tax demand against the Appellant Company.

- ix.** The company is having no proceedings pending under Sections 210 to 229 of the Companies Act, 1956 against the Company whereas no further proceedings under Sections 241 and 242 of the Companies Act, 2013 have ever been instituted against the Company. The Company declares that no Application pertaining to the subject matter of this appeal has been filed before any Tribunal or High Court or any other Tribunal and that no application is pending before any other Tribunal.
3. The Registrar of Companies, NCT of Delhi and Haryana vide it's report dated 18.08.2022 has not objected to the Restoration of the Company but has made certain observations. The Appellant Company have filed reply Affidavit dated 07.12.2022 in response to the observations made by the Registrar of Companies, NCT of Delhi and Haryana, wherein the Appellant Company have given an undertaking to appropriately comply with the observations made by the Registrar of Companies, NCT of Delhi and Haryana.
4. **Analysis and Findings**
- i.** The record has been thoroughly perused. We observe that the appellant in order to sustain his case, has placed reliance on the various documents which are filed along with the Appeal.
- ii.** The facts of the case are also similar to the law laid down in the matter of **Purushottam Dass Vs. Registrar of Companies, Maharashtra**, (1986) 60 CompCas 154 (Bom), wherein the Hon'ble Bombay High Court under the old Companies Act 1956 has held that:

*“The object of Section 560(6) of the Companies Act is to give a chance to the company, its members and creditors to revive the company which has been struck off by the Registrar of*

*Companies, within the period of 20 years, and give them an opportunity of carrying on the business only after the company judge is satisfied that such restoration is necessary in the interest of justice”.*

- iii.** In connection with the non-filing of statutory records, it is pertinent to refer to the findings of the Hon'ble High Court of Delhi in the matter of **Mace Platronics Pvt. Ltd. Vs. ROC**, reported in (2010) 104 SCL 277 (Del), wherein it was held that:

*“When the name of the company was struck off after following the prescribed procedure for non-filing of statutory records, even though the contentions of the company that the officials entrusted with the responsibility of filing documents had failed to do so cannot be accepted, yet since the company was a running company and the application had been filed in time, the court had the power to restore the name of the company.”*

- iv.** In the given facts and in order to achieve the most satisfactory and fairest solution, the restoration of the running company despite its default is clearly in the interest of the company, although, there is a non-filing of the documents with the Registrar of Companies in pursuant to the annual filing of various documents with respect to the Business before the RoC, however, the same can be compensated by way of requisite late filing fees.
- v.** We are of the firm view that the non-filing of the documents with the Registrar of Companies in pursuant to the annual filing of various documents with respect to the Business before the RoC

was only inadvertent in nature and not willful. Accordingly, the impugned order dated 29.10.2019 passed by the RoC, whereby the name of the present appellant was struck off from the Registrar of the Companies is hereby set aside, subject to the payment of cost of Rs. 50,000/- (Rupees Fifty Thousand Only). The Appellants are directed to deposit the amount of penalty with the Pay & Accounts Officer, Ministry of Corporate Affairs, New Delhi or any person authorized by him within three weeks from the date of this order, failing which the same shall be realised through the due process of law.

5. **Order**

- i.** In light of the above facts and circumstances, the Appeal bearing **130/252/ND/2021** filed by Mr. Udit Rathi, Member of M/s. Archit Securities Private Limited, Appellant before this Tribunal under Section 252(3) of the Companies Act, 2013 **stands allowed and disposed of.**
- ii.** In the interest of Revenue and Public, we are of the considered view that it is just and equitable to restore the name of the Company i.e. “M/s. Archit Securities Private Limited” having CIN: U74899DL1995PTC070876 in the Register of Companies maintained by the Registrar of Companies, NCT of Delhi and Haryana.
- iii.** The Registrar of Companies, NCT of Delhi & Haryana is therefore directed to restore the name of the Company in their Register and also proceed to take such other and further penal action against the Appellant in accordance with the statutory provisions. As a consequence, the name of the Appellant Company shall stand restored to the Register of the Registrar of Companies, as if the name of the company had not been struck off in accordance with Section 248(1) of the Companies Act, 2013, but the same is subject to filing of all outstanding documents (Annual Returns and Balance Sheets) as required under law and completion of all formalities including payment of

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any late fees or any other charges, which are leviable under the law.

**iv.** Let the copy of the order be served to the parties.

File be consigned to records.

**6. IA-(Comp.Act)- 249/2022**

The present Application has been filed by Mr. Udit Rathi, Member of M/s. Archit Securities Private Limited, the Applicant under Rule 11 of the National Company Law Tribunal Rules, 2016 before this Tribunal, for seeking the following Reliefs:

*“A. Direct the Respondent to waive off the Additional Fees after the revival of Company by the order of this Hon'ble Bench for the period time period lost during the pendency of the appeal filed under the provisions of Section 252 of Companies Act, 2013 [from the date of filing of appeal i.e. 03.09.2021 till its disposal]*

*B. Direct the Respondent to waive off the Additional Fees after the revival of the Company by the order of this Hon'ble Bench from date of striking off of name of the Company by the Registrar from the register of companies i.e. 29.10.2019 till the date of filing of the appeal under the provisions of Section 252 of Companies Act, 2013 i.e. 03.09.2021.*

*C. Direct the Respondent to waive off the Additional Fees after the revival of Company by the order of this Hon'ble Bench since 31.03.2010 till the date on which company was struck off by the Registrar i.e. 29.10.2019.*

*D. Alternatively, direct the Registrar of the Companies, Delhi to charge minimum additional fee as prescribed under the Companies Act, 2013.*

*E. Direct the Registrar of Companies, New Delhi to waive off the Additional Fees after the revival of company by the order of this Hon'ble Bench for the time period lost during the pendency of the appeal filed under the provisions of Section 252 of Companies Act, 2013 till the disposal of the said appeal.*

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*F. Pass such other/further order(s) or direction(s) as this Hon'ble Bench may deems fit and proper.”*

7. The Registrar of Companies, NCT of Delhi & Haryana (Respondent) is directed to charge a minimum additional fee in view of the circumstances described above. The Applicant is directed to file all the pending statutory returns viz., Balance Sheet and Annual Return with the filing fee and additional fee within a period of 30 days from the date of receipt of this order and the Registrar of Companies, NCT of Delhi & Haryana (Respondent) is directed to accept the same with a minimum additional fee.
8. In view of the above, the **IA-(Comp.Act)-249/2022** stands **dismissed** and **disposed of**.

**-SD-**

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

**-SD-**

**(MANNI SANKARIAH SHANMUGA SUNDARAM)  
MEMBER (JUDICIAL)**