

IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ

Appeal No.17/ALD/2023

IN THE MATTER OF:

An Appeal under Section 252(3) of the Companies Act, 2013.

IN THE MATTER OF:

EMPEROS INFRASTRUCTURE PRIVATE LIMITED

Having its Regd. Office at

Elan Press, Top Khana Road Kat Kuyy A Feeder

Rampur 244901, U.P.

AND

IN THE MATTER OF:

MUNIR ALI KHAN (DIRECTOR) S/O ZAMIR ALI KHAN,

R/o Lal Masjid, Rampur City, Rampur- 244901, U.P.

.....APPELLANT

Versus

REGISTRAR OF COMPANIES U.P.,

37/17, WESTCOTT BUIDLING

THE MALL, KANPUR-208001, U.P.

.....RESPONDENT

Order pronounced on 16th April, 2024

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Coram:

Mr. Praveen Gupta. : Member (Judicial)
Mr. Ashish Verma : Member (Technical)

PRESENT:

Sh. Suyash Agarwal, Adv. : *For the Appellant*
Sh. Niraj Kumar Singh Proxy for : *For the Income Tax*
Sh. Krishna Agarwal, Sr. S.C. : *Department*

ORDER

1. This Appeal has been filed on 04.03.2023 by M/s Emperos Infrastructure Pvt. Ltd. (hereinafter referred as the Appellant/Appellant Company), through its Director Mr. Munir Ali Khan under Section 252(3) of the Companies Act, 2013, (hereinafter referred as the Act) against the order of the Registrar of Companies, Uttar Pradesh, Kanpur (hereinafter referred as "ROC/Respondent striking off the name of the Companies and praying for restoration of the Company's name i.e. Emperos Infrastructure Pvt. Ltd. in the Register of Companies maintained by ROC.
2. Emperos Infrastructure Pvt. Ltd., the Appellant Company was incorporated on 11.10.2017 under the Companies Act,

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2013 bearing CIN: U70109UP2017PTC097744. The registered office of the Company is at Elan Press, Top Khana Road Kat Kuyy A Feeder, Rampur, U.P.-244901.

- 3.** The Company is engaged in the business ventures that includes real estate development, construction, and urban infrastructure projects. It operates as builders, developers, and contractors, facilitating the development of residential and commercial properties while providing modern amenities. Additionally, it undertakes urban infrastructure projects such as roads and bridges, offering comprehensive services from design to execution. The company is also involved in construction projects, providing expertise in residential and commercial development.
- 4.** The Appellant company is having an authorized and fully paid-up capital of Rs. 1,00,000/- and is managed by three full time directors namely Munir Ali Khan (DIN-06395802), Atif Khan (DIN-07943478) and Mohammad Haris Khan (DIN-07943492)

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- 5.** The name of the appellant company is stated to have been struck off from the Register of Companies by the Respondent RoC due to the reason that the Appellant Company has not been carrying on any business or operation for a period of two immediately preceding financial years and has not made any application within such period for obtaining the status of dormant company under Section 455. A notice in Form STK 1 regarding this matter was sent to Appellant on 23.11.2021. However, the Appellant contends that they did not receive this notice and therefore, could not reply the same. The Director of the Appellant Company, Mr. Muneer Ali was tasked with filing of the annual returns and balance sheets but inadvertently forgot to file the same as a result of which the name of the Company was struck off from the Register of Companies on 31.10.2022 by publishing of notice in STK-7 as per Section 248(5).
- 6.** As stated in Appeal, the Appellant Company has been an ongoing concern since its incorporation and has duly complied with all the regulatory requirements as prescribed by the Act. Copies of Balance sheet for financial years:2017-

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18, 2018-19, 2019-20 and computation of total income for 2017-18 and 2018-19 along with copies of Income tax returns for 2017-18 and 2018-19 have also been annexed as Annexure 5 and Annexure 6 respectively with the appeal. In Master Data of the company downloaded from the MCA website as attached with the Appeal, the appellant company is shown to be Active Non-compliant.

7. In view of the facts and circumstances of the case as explained above, the Appellant Company has prayed to pass appropriate order to restore the name of the Company in the Register of Companies maintained by the office of the Registrar of Companies, Uttar Pradesh, Kanpur.
8. As the appeal for restoration of the name of the company has been filed after passing of order by the ROC in accordance with the provision of Section 248(1) read with Section 248(5) striking off the name of the company from the Register of Companies and consequently dissolving it as per Notice published in STK-7, the relevant provision for filing of such appeal is Section 252(1) and not Section 252(3) in which application is filed when the Company having its name struck

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off following the provision of Section 248(2). Limitation period for filing of appeal u/s 252(1) is three years from the date of the order of ROC. In this case, order by the ROC has been passed on 31.10.2022 and appeal has been filed on 04.03.2023, which is within the limitation period of 3 years, hence the appeal has been found to be maintainable, though filed under wrong provision of Section 252(3) instead of being filed u/s 252(1). It is settled law that mentioning the wrong provision of law or not mentioning a provision does not invalidate any application or order. Therefore, mentioning of wrong provision is not fatal to application if the power to pass the order on that application is available to the Court. In the instant case, we have already found that the appeal filed by the Appellant Company is maintainable u/s 252(1), hence we have considered this appeal as filed u/s 252(1).

9. In response to the above appeal filed by the Appellant Company, notices were issued to ROC and the Income Tax Department calling for their reports to satisfy ourselves whether restoration of the company would be in the interest of justice and in the public interest and appellant are

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genuinely interested in running the company after its restoration and the defaults on account of which, the company has been struck off, have actually happened or not.

- 10.** The ROC/Respondent has filed its reply wherein he states that the name of the Appellant Company was struck off from the register of companies on account of default in statutory compliances by not filing statutory documents i.e. Balance Sheet and Annual Returns since 2020 in contravention to Section(s) 92 and 137 of the Act respectively. Despite being given fair opportunity of being heard by way of show cause notice, the Company and its directors failed in fulfilling their mandatory duty of filing the statutory returns of the Company. Further, no objections were received from any person either. However, the Respondent ROC further states that the matter may be decided on merits subject to assurance of the company to file all the pending financial statements with the office of the ROC through MCA portal and heavy fine may be imposed on the company and its directors to ensure that the company becomes more diligent in timely compliance of the Companies Act, 2013 in future.

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- 11.** The Appellant Company filed a rejoinder affidavit on 15.11.2023, reiterating that the Appellant Company was an ongoing concern at the time when it was struck off and no notice was served on the Appellant Company, hence no reply could be filed. Furthermore, upon perusal of the Profit & Loss Account of 2019-20, it is evident that Rs. 3,72,70,190.32 has been earned from operations.
- 12.** The Income Tax Department has filed its reply/report, stating that the Company has regularly filed its ITR from A.Y. 2018-19 to 2022-23, copies of which have been attached with the reply/report. There are neither outstanding demands nor any assessment proceedings pending against the Company. The Company has shown income from the assessment years 2018-2019 to 2022-2023, and PAN of the Company was found to be generated on 11.10.2017, which was after the demonetization period. It has also been reported that an 'on-spot' physical verification of the registered address of the Company was carried out by the Inspector of the Income Tax Department, who reported that the Company existed at the given address. Further, the last available balance sheet on

the e-filing portal is for A.Y. 2021-22. As per Balance-Sheet under the Head “Current Assets-Cash and Cash Equivalents”, the amounts shown are shown as Rs. 5,72,725.78.

- 13.** Considering the facts, circumstances, and responses from the concerned statutory authorities connected with the functioning of the companies as discussed in the aforementioned paragraphs, we find that the Appellant Company has been conducting business, earning income and filing income tax returns. Even as per Master Data of Appellant Company available in MCA portal, it is shown as active but not compliant due to not filing of the statutory documents, i.e., Balance Sheet and Annual Returns since 2020. Now, the Company has undertaken to file all the pending annual returns and Balance Sheets, along with the requisite fees required under the law, after its name is restored and would also take necessary action for removal of disqualification of its directors. In order to show that the company is actively involved in carrying on its business, copies of Balance Sheets for financial years from 2017-2018

to 2019-2020 and computations of total income for 2017-18 and 2018-19 have been submitted. As the company has been found to having required resources for carrying on the business and it has been carrying on the business at the time when its name was struck off and also regularly filing its income tax returns, we find that non-filing of statutory documents is only technical in nature for which the Appellant has given undertaking to fulfil these requirements as per the Companies Act, 2013 and the Income Tax, 1961 as well. An affidavit in this regard has also been filed.

- 14.** Considering the facts and circumstances of the case as discussed in foregoing paras and taking into account the affidavit filed by the Appellant Company in response to reply/report of ROC, we allow the instant appeal to the extent of directing the ROC, Uttar Pradesh, Kanpur to restore the name of the Appellant Company on the Register of Companies in the same position as nearly as may be as if the name of the company had not been struck off from the Register of Companies, changing the status of the appellant Company from **“struck off”** to **“active”** and take such further action

against the Appellant Company in accordance with the statutory provisions.

- 15.** Taking into account our decision as discussed in para 14 above, the restoration of the Company's name will be subject to the payment of the cost of Rs.25000/- through online payment in *www.mca.gov.in* under miscellaneous fees by mentioning particular as "*Payment of cost for restoration of the company pursuant to orders in APPEAL No. 17/ALD/2023*" and also to make payment of Rs. 25000/- to the Prime Minister National Relief Fund.
- 16.** This Petition/Appeal is disposed of on the terms directed above. The ROC shall give effect to this order only after perusal of the compliance report of the cost imposed. After due compliance with the above directions, the ROC, Uttar Pradesh, Kanpur shall publish the order for restoration of the name of the company in the Official Gazette under its office name and seal. The Company is directed to file all the statutory documents including Annual Accounts and Annual Returns along with the prescribed fees and additional fees as ordered by the ROC, Uttar Pradesh, Kanpur as applicable

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under the Companies Act, 2013 within 45 days from the date on which its name is restored on the register of companies maintained by the Registrar of Companies, Uttar Pradesh, Kanpur. They shall also fulfil all the other relevant statutory compliances, such as under the Companies Act, 2013 and the Income Tax Act, 1961, etc. This order is confined to the violations, which ultimately led to the impugned action of striking off the name of the Company, and it will not come in the way of the Registrar of the Companies, Uttar Pradesh or any other concerned Government Authority to take appropriate action(s) in accordance with law, for any other violations/offences, if any, committed by the Appellant Company prior to or during the period the name of the Company remained struck off.

- 17.** The Registry is directed to send copies of the order forthwith through email to all the parties in the matter.
- 18.** The appellant company is directed to deliver a certified copy of this order with ROC, Uttar Pradesh, Kanpur within 30 days of the receipt of the order.

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19. Certified copy of the order be issued upon making an application by any concerned party with all requisite formalities.

20. APPEAL No.17/ALD/2023 stands disposed of accordingly.

-Sd-

**(Ashish Verma)
Member (Technical)**

-Sd-

**(Praveen Gupta)
Member (Judicial)**

Date: 16th April, 2024