

**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ**

Appeal No. 20/ALD/2023

U/s. 252(1) of the Companies Act, 2013

IN THE MATTER OF:

AVNI BUILDHOMES PRIVATE LIMITED

A COMPANY HAVING REGISTERED OFFICE AT:
H. NO. 189 V & P DUNDAHERA GHAZIABAD
UP 201009 IN.

(HEREIN AFTER REFERRED AS “COMPANY”)

AND IN THE MATTER OF:-

MR. NITIN TYAGI (Shareholder)

S/o SHRI KAILASH CHAND TYAGI
RESIDENCE OF- 189, DUNDAHEDA,
GHAZIABAD, UP - 201009

.....APPLICANT

VERSUS

THE REGISTRAR OF COMPANIES, KANPUR, UP

37/17, WESTCOTT BUILDING, THE MALL
KANPUR-208001.

.....RESPONDENT

Order Pronounced on: 16th April, 2024

CORAM: 1. Hon’ble Shri Praveen Gupta, Member (Judicial)
2. Hon’ble Shri Ashish Verma, Member (Technical)

PRESENT:

For the Appellant : Sh. Abhishek Mishra along with
Sh. Ravi Kumar Singh, PCS

For the IT Department : Sh. Niraj Kr. Singh
For Sh. Gaurav Mahajan, Sr.S.C.

ORDER

1. This Appeal has been filed on 10.4.2023 by its director and shareholder, Mr. Nitin Tyagi (hereinafter referred as the “Appellant”) on behalf of the Company, M/s Avni Buildhomes Pvt. Ltd. under Section 252(1) 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 Company from the Register of Companies with prayer to restore the name of the Company i.e. Avni Buildhomes Pvt. Ltd. in the Register of Companies maintained by the ROC.
2. M/s Avni Buildhomes Pvt. Ltd. (hereinafter called as the ‘Company’) was incorporated on 19.2.2016 under the Companies Act, 2013 bearing CIN: U70102UP2016PTC076717. The registered office of the company is at H. No. 189 V & P Dundahera, Ghaziabad, U.P.- 201009.

- 3.** The Company is engaged in the business of construction-related activities, including construction, building, engineering, town planning, surveying, valuation, decoration, furnishing, and manufacturing of prefabricated houses. They also act as agents and contractors for real estate purposes, including residential and commercial complexes, multi-storied buildings, and infrastructure projects. Additionally, they deal in and act as agents for various types of properties, including residential, commercial, agricultural, and mining properties, and construct, maintain, and alter such properties for leasing or renting purposes.

- 4.** As submitted by the Appellant, the Authorized Share Capital of the Company as on 31.3.2022 is Rs. 1,00,000 (Rupees One Lac only) divided into 10,000 Equity Shares of Rs. 10/- each. Issued, subscribed and paid-up share capital of the Company is Rs. 1,00,000 (Rupees One Lac Only) divided into 10,000 shares (Ten Thousand shares) Equity Shares of Rs. 10 each out of which 5000 shares are allotted to Sh. Nitin Tyagi and Sh. Neeraj Tyagi each. Both are also promoters and directors of the Company

5. It is further stated by the Appellant that the Company has admittedly defaulted in filing its Annual Return and Balance Sheet since 2019, and therefore vide order/notification as per STK-7 dated 24.5.2022, the name of the Company has been struck off by the ROC from the Register of Companies under Section 248(5) of the Companies Act, 2013 and the said Company is dissolved. The Appellant states that neither the Directors nor the Company were in receipt of any prior information of notice of dissolution of the Company. The Appellant however, states clarifying that the Company is in obedience of law and maintains books of account along with all the statutory documents as required under the Act on regular basis recording the financial transactions of the Company. It also regularly prepares all financial statements including Profit & Loss Account along with detailed annexures as required under the Companies Act, 2013 and Rules made there under but inadvertently could not file the same before the Respondent which resulted in the Company's name getting struck off from the Register of Companies. Details of Revenue/Other Income receipts, Profit/Loss earned, Capital Funda available and the Assets of the

Company are also given from the year 2018 to 2022 along with the Audited Financial Statements attached with the Appeal as Annexure-5. The Company has liabilities comprising unsecured loans from directors and others, as well as secured loans from the bank. The audited Balance Sheet shows Non-Current liabilities of Rs. 1,69,52,400 and Current Liabilities of Rs. 1,55,17,200 as of 31.3.2022. Additionally, the audited balance sheet for the year ending 31.3.2022 reflects Non-Current Assets in the form of plant and machinery amounting to Rs. 800, and Current Assets in the form of inventories amounting to Rs. 2,13,78,200, along with Other Current Assets of Rs. 91,93,400.

- 6.** The Appellant states that the company holds two bank accounts, one with Axis Bank, Account No. 916020016022421, and the other with IndusInd Bank, Account No. 259999800074. The copies of both bank account statements have also been annexed with the Appeal as Annexure-8.
- 7.** The Appellant has submitted that the Company has duly filed its IT Returns for A.Y. 2016-17, 2017-18 and 2018-19

acknowledgement copies of which have also been annexed as Annexure 6 with the appeal.

- 8.** An undertaking by the Directors of the Company has given in the Appeal stating that the Company shall file and complete all its pending Annual Filing with Registrar of Companies, Uttar Pradesh (Kanpur) as per the directions of this Tribunal and be cautious and diligent in future with respect to filing of the documents/forms with the Respondents and shall not make any default of the same nature in future.
- 9.** In view of the facts and circumstances of the case as explained above, the Appellant Company has prayed to pass appropriate order in terms of Section 252 (1) of the Companies Act 2013 and the name of the Appellant Company be restored in the Registrar of Companies maintained by the office of the ROC.
- 10.** After considering the above appeal, 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 genuinely interested in running the

Company after its restoration and to ascertain whether removal of the name of the Company is justified in view of the grounds on which such order was passed by the ROC.

- 11.** The ROC/Respondent has filed reply stating 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 Balance Sheet and Annual Returns since 2019 under the Act. Despite being given fair opportunity of being heard by way of show cause notice, the company and its directors neither responded to the notice nor filed statutory returns. No objection was received from any person either, which further contravened Section(s) 92 and 137 of the Act. However, the Respondent states that the matter may be decided on merits subject to assurance of the company to comply with all the pending requirements under the Act.
- 12.** The Income Tax Department has also filed its reply/report, stating that the Company the Company has not filed its ITR for the A.Y's. 2020-21, and no reason has been provided for the same. The outstanding demand on the ITBA portal reflects that a demand of Rs. 22,020 is due in respect of A.Y.

2018-19, which is still not paid. Apart from this demand, no other demand or proceeding is pending under the Income Tax Act.

13. The Appellant filed a rejoinder on 11.3.2024 in response to the ROC Report and reiterates that neither the Company nor its Directors received any notice of the strike-off of the Company, resulting in its inability to file a response. However, it is further emphasised that the Company is running the business regularly and necessary data in this respect have been presented and an undertaking has also been given that all pending compliances under the Companies Act, 2013 shall be made after the Company is restored. In response to the IT Report, the Appellant has undertaken to pay the outstanding demand of Rs. 22,020/- after the Company is restored.

14. Considering the facts and circumstances and response from the concerned statutory authorities connected with the functioning of the companies as discussed in aforesaid paras, we find that that the Appellant Company has been carrying on the business on regular basis and also filing return of

income. Though statutory documents have not been filed to ROC since 2019 filed but as it has been undertaken by the Company that it would file all the pending annual accounts with statutory forms and documents after its name is restored. Even ROC in his report has submitted to decide the matter on merit on giving of assurance by the Company to file all the pending financial statements subject to payment of heavy fine in case the appeal for restoration of the name of the Company is allowed. In order to show that the company is actively involved in carrying on its business, copies of bank statements, ITR acknowledgements for A.Y. 2016-17 till 2018-19, audit report with audited Balance Sheet and Profit and Loss accounts from the FY ending 31.3.2018 to FY ending 31.3.2022 have been submitted. No objections have been raised in the Income Tax Report on restoration of the name of the Company as it is regularly filing returns of income and also, the existence of the Company has not been disputed. Only outstanding demand and one return of income which is pending to be filed has been mentioned for which the Company has given undertaking to pay and file the

pending return of income after the name of the Company is restored.

15. Considering the facts and circumstances of the case as discussed in foregoing paras, 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 Law.

16. Taking into account the report of the ROC as discussed in para 11, the restoration of the Company’s name will be subject to the payment of the cost of Rs. 25,000/- 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 Company Appeal No. 20/ALD/2023*” and also to make payment of Rs. 25,000/- to the Prime Minister National Relief Fund.

17. 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 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. including paying outstanding income tax demand and filing the pending returns of income as mentioned in the report of the Income Tax Department. 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.

- 18.** The Registry is directed to send 1 copies of the order forthwith through e-mai to all the parties in the matter.
- 19.** The Appellant Company is directed to deliver a certified copy of this order to ROC, Uttar Pradesh, Kanpur within 30 days of the receipt of the order.
- 20.** Certified copy of the order be issued upon making an application by any concerned party with all requisite formalities.
- 21.** Company Appeal No.20/ALD/2023 stands disposed off accordingly.

-Sd-

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

-Sd-

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

Date: 16th April, 2024