

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

CP No.88/ALD/2023

IN THE MATTER OF:

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

IN THE MATTER OF:

Florence Buildtech Private Limited

Having its Regd. Office at

F-7, Globus-D, Plot No.5 & 6 Sector-63, Noida, Gautam Budh

Nagar, U.P.- 201301

..... APPELLANT NO.2

AND

**MANISH KUMAR GOEL (DIRECTOR) S/O Sh. VINOD KUMAR
GOEL,**

R/o H.No.-1108, Opp Shiv Mandir, Pilkhua Dehat, Ghaziabad,
U.P.- 245304

.....APPELLANT No.1

VERSUS

REGISTRAR OF COMPANIES U.P.,

10/499 B, Allenganj, Khalasi Line, Kanpur- 208002

.....RESPONDENT No.1

INCOME TAX DEPARTMENT

AT WARD 5(1)(3) Gautam Budh Nagar

NOIDA UP

.....RESPONDENT No.2

Order pronounced on: 23rd April, 2024

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

PRESENT:

- Sh. Rajiv Ranjan Sinha, PCS : *For the Petitioner*
- Sh. Krishna Dev Vyas, Adv. : *For the ROC*
- Sh. Gaurav Mahajan, Sr. SC with
Sh. Niraj Kumar Singh, Adv : *For the Income Tax
Department*

ORDER

1. This Appeal has been filed on 04.10.2023 by M/s Florence Buildtech Pvt. Ltd. (hereinafter referred to as "Appellant Company") through its director Manish Kumar Goel on behalf of M/s Florence Buildtech Pvt. Ltd. (hereinafter collectively referred to as 'the Appellant') 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 M/s Florence Buildtech Pvt. Ltd. in the Register of Companies maintained by the ROC.
2. M/s Florence Buildtech Pvt. Ltd., the Appellant Company was incorporated on 24.07.2014 under the Companies Act, 2013

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bearing CIN- U70102UP2014PTC065102. The registered office of the Company is at F-7, Globus-D, Plot No.5 & 6 Sector-63, Noida, Gautam Budh Nagar, U.P.- 201301. The copy of certificate of incorporation has been annexed as Annexure A with the appeal.

- 3.** The Appellant Company is engaged in carrying on the business of civil construction, real estate business, estate agents, estate developers, property dealers, promoters, land development, town planning and allied activities.
- 4.** The Appellant submitted that the Authorized paid-up Share Capital of the Company is Rs.1,00,000/- divided into 10,000 shares of Rs.10 each and it is fully subscribed by three shareholders namely Sh. Piyush Veer Singh having 3300 shares, Amit Goyal having 3300 shares and Sh. Manish Kumar Goyal having 3400 shares.
- 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 defaulted in statutory compliances by not filing statutory documents i.e. Balance sheet and Annual Returns since

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2019. The Appellant contends that they did not receive any notice and therefore, could not reply the same. As a result of which the name of the Company was struck off from the Register of Companies on 31.05.2022 by passing of order in Form No. 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. The Company is having trade payable amounting to Rs. 1,37,37,742/- along with salary payable to employees including Director's remuneration of Rs. 19,20,000/- amounting to Rs. 19,62,500/- in the F.Y. 2017-18, Sundry trade creditors for Rs. 58,04,564/-, stock in hand to be liquidated for Rs. 1,89,51,335.00/- and advance from customers of Rs. 99,50,000/ till 31.3.2018 as per audited balance sheet. However, due to the name of the Company being struck off as well as incomplete KYC formalities, the pending payments could not be completed. It is contended that the Appellant Company wants to sell its properties lying in stock and wants to receive payment in the account but the

Bank Account of the Company has been inactive due to which the Appellant Company is not able to collect payment regarding the same and continue as Going Concern.

- 7.** It has also been undertaken in the Appeal that in the event of revival and restoration of the name of the struck off status of the Appellant Company in the Register maintained by the Respondent, the Appellant shall file all pending statutory documents that is all the financial statements and annual returns along with the applicable fees and is also ready to pay any payments as stated to have been defaulted by the Appellant.
- 8.** 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.
- 9.** In response to 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 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.

- 10.** 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 statutory documents i.e. Balance Sheet and Annual Returns since 2019 in contravention to Section(s) 92/137 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. 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.

- 11.** The Income Tax Department has filed its reply/report, stating that the Company has filed its income till A.Y. 2018-19 and there is a demand of Rs.580/ raised by CPC pending against the Company for the said assessment year. The ITR for A.Y. 2019-19 shows that the Company has shown work in progress of Rs. 1,89,51,335/-, Trade receivables of Rs. 58,04,564/ and Trade payable of Rs. 1,37,37,742/-. The digital database reveal that no returns have been filed thereafter from A.Y. 2019-20 up to A.Y. 2023-24. Further, neither any regular assessment proceedings nor reassessment proceedings have been initiated against the Company or any other proceeding is pending. No demand is outstanding against the Company except of Rs. 580/- for A/Y-2018-19. The restoration of the Company is in the interest of the revenue as revenue from operation as reflected in the Profit and Loss Statement for the year ending on 31.03.2018 was Rs. 2,23,30,000/- and also the fact that the

Company wants to sell of its properties lying in stock and also intends to revive its business as stated in the appeal.

- 12.** 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 engaged in conducting business and filing of income tax returns till A.Y.2018-19 but thereafter, it could not run the business and file the income tax returns due to being struck off by the ROC. Even as per Master Data of Appellant Company available in MCA portal, it is shown as ACTIVE compliant. It was struck off due to not filing of statutory returns with financial statements and annual account from the year 2019 onwards, though it was actively involved in running of the business. Now, the Company has undertaken to file all the pending annual returns and financial statements, along with the requisite fees required under the law, after its name is restored. As the company has been found to be 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, 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.

- 13.** As the appeal for restoration of the name of the company has been filed against the order of the ROC passed 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 is having its name struck 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 31.05.2022 and appeal has been filed on 04.10.2023, 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 the 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).

- 14.** Considering the facts and circumstances of the case and reports of the respondent Government Authorities 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 statutory provisions.

- 15.** Taking into account our decision as discussed in para 14, 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 CP. No. 88/ALD/2023*" and also to make payment of Rs. 25,000/- to the Prime Minister National Relief Fund.
- 16.** This Petition/Appeal is disposed off 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

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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 filing of the pending income tax returns. 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 through e-mail forthwith 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.

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

20. CP No. 88/ALD/2023 stands disposed of accordingly.

-Sd-

(Ashish Verma)
Member (Technical)

-Sd-

(Praveen Gupta)
Member (Judicial)

Date: 23rd April, 2024