

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

C.P. No. 15/ALD/2023

IN THE MATTER OF:

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

IN THE MATTER OF:

UK INFRA REALTECH PRIVATE LIMITED

Having its Regd. Office at

F.No. S-104, 23/1, Master Jahar Road, Allahabad, U.P.-211001

.....Appellant No.1

Through its Director

Umakant Mishra

S/o Late Ram Raksha Mishra

R/o Aajo, Nevaraha, Jaunpur, U.P.-222201

.....Appellant No.2

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 Petitioner : Sh. Piyush Kesarwani, PCS with
Sh. Anurup Dutta, Adv.

For the ROC: Sh. Krishna Dev Vyas, Adv.

For the IT Department : Sh. Niraj Kr. Singh
For Sh. Krishna Agarwal, Sr.S.C.

ORDER

1. This Appeal has been filed on 25.12.2022 by M/s UK Infra Realtech Pvt. Ltd. (hereinafter referred to as Appellant/Appellant Company) through its Director Mr. Umakant Mishra 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 Appellant Company from the Register of Companies with a prayer to restore the name of the Company i.e. UK Infra Realtech Pvt. Ltd. in the Register of Companies maintained by the ROC. Later, an affidavit was filed on 30.01.2024 by the

Appellant to treat the present petition u/s 252(1) instead of 252(3).

- 2.** M/s UK Infra Realtech Pvt. Ltd. i.e. the Appellant Company was incorporated on 22.07.2016 under the Act bearing CIN: U70109UP2016PTC085120. The registered office of the Company is stated to be at F. No. S-104, 23/1, Master Jahar Road, Allahabad- 211001.

- 3.** The Appellant Company is stated to be carrying on the business of purchasing, acquiring, leasing, or exchanging land, buildings, and structures, developing them, and disposing of or maintaining them, building townships, markets, residential and commercial buildings, and equipping them with amenities such as drainage, electricity, telephones, and television installations, developing and maintaining various structures, including houses, apartments, hospitals, schools, highways, roads, and pavements, purchasing or leasing land, preparing layouts, and constructing buildings for various purposes since its incorporation.

4. The Appellant company is stated to be having an authorized and fully paid-up share capital of Rs. 1,00,000/- and is managed by three directors namely Umakant Mishra, Suman Mishra and Dupesh Yadav.

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 STK-5 u/s 248(4) of the Act regarding this matter was published in Gazette of India on 07.03.2022 proposing striking off the name of the Company from the Register of Companies and dissolving it for which objection by any person was invited. However, the Appellants contends that they did not receive this notice either u/s 248(1) in STK-1 or u/s 248(4) in STK-5 and therefore, could not reply the same. Consequently, the name of the Appellant Company was struck off from the Register of Companies maintained by the ROC, Uttar Pradesh, Kanpur and the Company was dissolved vide STK-

7 after 30 days of publishing of notice in STK-5. It is contended by the Appellant Company that it engaged a professional who mistakenly failed to file the returns in time due to which the name of the Company was struck off.

6. As contended by the Appellant Company that it has been an ongoing concern since its incorporation, and according to the audited Balance Sheet, it had an annual turnover of Rs. 1,15,08,000, Rs. 1,44,54,870, Rs. 35,65,800, and Rs. 45,18,210 for the financial years 2017-18, 2018-19, 2019-20, and 2020-21 respectively. The Balance Sheet and Profit and Loss Account for the years 2018 is showing loss of (-) Rs. 33,996.51 but for 2019, 2020, and 2021, profits of Rs. 26,168.51, Rs. 1,35,483.68, and Rs. 1,51,558 respectively have been shown. Additionally, the Appellant Company has cash and cash equivalents of Rs. 11,97,268 and short-term loans and advances of Rs. 22,65,870 as per the last audited Balance Sheet for the financial year ending on 31.3.2021. The company is also shown owning properties as per the Conveyance deeds dated 08.07.2021, 07.09.2021, and 04.04.2022 attached along with the appeal documents.

- 7.** After presenting the above details and explaining the facts and circumstances of the case in the appeal documents, 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.** 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 the defaults on account of which, the company has been struck off, have actually happened or not.
- 9.** The ROC/Respondent has filed reply/report 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 2018 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. 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.

- 10.** The Income Tax Department has filed its reply/report, stating that the Company has not filed any ITR till date. There are neither outstanding demands nor any assessment proceedings pending against the Company, and no income from business has been shown by the Company. However, the Company has been found to have shown a cash deposit of Rs. 2,37,000/- in its ITR during the demonetization period. Furthermore, on physical inspection, the Company was not found at its registered address as shown in the Master Data of the Company available in MCA 21 site.

- 11.** The Appellant, in response to the report filed by the Income Tax Department, submitted a rejoinder on 01.08.2023, stating that the Company changed its registered address in February 2023 from F. No. S-104, 23/1 Master Jahar Road, Allahabad-211001 to H. No. Fateh Niwas, 111/25/46, LIC Road, Tagore Town, Prayagraj-211002 due to rent considerations.
- 12.** The Income Tax Department filed its Supplementary Reply on 13.2.2024, wherein they conducted another physical verification of the Appellant Company's aforementioned new address and reported that there were no signs boards of the Company outside the house. Upon entering the premises, they found a hoarding displaying the Appellant Company's name placed behind a table inside the front verandah on which dust etc. had accumulated. The verandah portion of the house was found to be locked and had not been seemed to be opened for months and hence, could not be seen from inside. Further inquiry with other tenants and nearby individuals revealed that they were unaware of the existence

of the Appellant Company. Copies of Photographs of the said house and locked gate have been annexed with the report.

13. In response to the Supplementary reply filed by the Income Tax Department, the Appellant filed a Supplementary rejoinder on March 4, 2024, stating that the registered office of the Appellant Company is actively in operation but was found to be closed due to ongoing fieldwork at that time. The board of the registered office is placed behind a table to protect it from damage every time before the office is closed and is placed back upon reopening. It was merely coincidental that the two individuals inquired about the registered office of the Appellant Company were unaware of its existence, as generally, people in the neighbourhood are aware of the Company's existence at its aforementioned registered address. Copies of the photographs of the registered office of the Appellant Company have been attached with the reply.

14. We have considered entire facts of the case as presented before us by the Appellant as well as the ROC and Income Tax department and also examined the facts and

circumstances under which the name of the Appellant Company got struck off by the ROC from the Register of Companies. The Company was incorporated on 22.07.2016 and it is undisputed fact that it stopped filing its annual returns and other statutory documents to the office of ROC one year after its incorporation though it has claimed to have continued with its business. It means that only for one year i.e. 2017, annual returns and Balance Sheets have been filed. Income Tax Department has also reported that no Income Tax Returns have been filed by the Company since its incorporation despite showing profits in its Audited Profit & Loss Accounts and Balance Sheets for FY 2018-19, 2019-20, 2020-21 as filed along with the Appeal Documents. Even existence of the company could not be verified despite enquiry in this regard was made twice by the Income Tax Department, first on the Registered Address of the Company as available in the record of the ROC and then second time on the changed address as reported by the Company in its rejoinder. It is also pertinent to note that despite claiming to have changed the registered office, the Appellant Company has neither informed to ROC nor even mentioned in the

Appeal Document. Even on changed address, no business activity of the Company was found for which an unconvincing explanation by the Company was filed stating that it was coincidence that when official of the Income Tax Department visited the premises, the Directors of the Company had gone to field for dealing in the properties and the person contacted were not aware about the Company though in the neighbourhood, people know about the Company. It is also worth to note that in the rejoinder, the Company tried to justify about the existence of the Company but it did not give any explanation about not filing the income tax returns despite the facts that earning of profits for three financial years have been shown and even the payment of taxes has been shown in the said Profit & Loss Account attached along with the Appeal Documents.

- 15.** From the above facts and circumstances , we find that the Audited Balance Sheets and Profit & Loss Accounts for four years filed before us along with the Appeal Documents are made only for the purpose of filing of the appeal in order to get the name of the Company restored, otherwise had such Audited Balance Sheets and Profits & Loss Accounts existed

at the relevant time and that too showing profits , nothing could have prevented the Company to file Income Tax Returns and pay the Taxes as per law. It is also stated in the Appeal Document that the Appellant Company has convened its Annual General Meetings regularly. If Annual Financial Statements were regularly audited and audited Balance Sheets and Profit & Loss Accounts were regularly prepared as well as Annual General Meetings were being regularly held, then the question arises as to what prevented the Appellant Company to file its Annual Accounts with all the statutory documents to the ROC after convening of the Annual General Meeting and adopting the Annual Accounts in that meeting. For such failure of the Appellant Company, it is simply stated in the Appeal Document at one place that the Appellant Company failed to file the statutory returns in time for the sole reason of such mistake being inadvertent mistake and then at another place put the blame on the professional engaged stating that the Appellant Company could not make the statutory compliance due on time because the professional engaged, mistakenly had not filed the returns. Such reasons of non-compliance explained by the Appellant

Company has not all found by us to be convincing looking to the fact that if Annual General Meeting of the Company was being held regularly and Audited Annual Accounts being available which could have been put up in the Annual General Meeting and adopted by the shareholders of the Company and subsequently after the Annual General Meeting , these accounts along with statutory documents could have been filed to ROC and in case if any failure in this regard happened, it cannot be said to be inadvertent mistake or any mistake committed by the professional. Considering these facts and circumstances, the only conclusion which can be drawn is that either the Appellant Company's Annual Accounts were not getting prepared and audited on regular basis during the regular course of the business and they are prepared only at the time of filing of the Appeal. Or else, the Annual Accounts were not being filed regularly to ROC after its incorporation to hide the affairs of the Company.

- 16.** It is also interesting to note from the Audited Financial Statements attached with the Appeal Documents that the Appellant Company has shown profit of Rs. 37,870/- and tax payment of Rs. 11,701/, for F.Y. 2018-19, profit of Rs.

1,96,069/- but no tax payment for F.Y. 2019-2020 and Profit of Rs. 2,02,538/- and tax payment of Rs. 50,980/- for F.Y. 2020-21 but no income tax returns for these years have been filed. When these defaults by the Company have been reported by the Income Tax Department, no explanation have been filed by the Appellant Company in its rejoinder. In the report of the Income Tax Department, it has also been stated that Rs. 2,37,000/- in cash was deposited in the account of the Appellant Company during the demonetisation period but no explanation in this regard has been given in the rejoinder filed by the Appellant Company.

- 17.** Considering all these facts of the Appellant Company as discussed above, showing non adherence with the laws of the country in filing of statutory returns with the ROC as well as the Income Tax Department and also failing to establish any genuine business being carried out by it at the address claimed to be its registered office as reported by the Income Tax Department, various data and documents presented before us to show running of business by the Company, has not been found by us reliable , hence we find that the Appellant Company has not come before us with clean hands.

18. Considering the facts and circumstances as well as the responses from the concerned statutory authorities connected with the functioning of the companies as discussed in the aforementioned paragraphs, we are of the considered opinion that the Appellant Company is not involved in any genuine business. The only indication of its presence at the registered address was a board bearing the Appellant company's name, placed on a table as shown in the copies of the photograph but the existence of company as well as any genuine business being carried out by the Company could not be established and it is also reported by the Income Tax Department that this company has deposited cash during demonetisation period and no return of income is being filed despite showing turnover and profit in the Profit and Loss Account filed along with the appeal, which itself clearly demonstrate that these annual financial statements are not prepared during the regular course of the business but got prepared for the purpose of filing of appeal only to get the name of the Company restored . Therefore, we are of the opinion that the name of the company was rightly struck off due to non-compliance of the provisions of the Companies

Act, 2013 under section 248(1) and there are no plausible reasons and grounds in defence hence, the name of the Appellant Company cannot be restored.

19. C.P. No. 15/ALD/2023 stands dismissed accordingly.

-Sd-

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

-Sd-

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

Date: 16th April, 2024