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IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH
CUTTACK

CP No. 42/CB/2023
&
IVN. No. 1/CB/2024

In the matter of:

Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 and the other relevant Rules;

-And-

Anushtha Builders and Colonizer Private Limited, a company incorporated under the Companies Act, 1956 and having its Registered Office at- Junwani Khamaria Road Bhilai Durg, 490 020 in the State of Chhattisgarh within the aforesaid Jurisdiction;

... **Struck-Off Company**

-And-

Mr. Raghvendra Das Vaishnav, S/o. Late Shri Narendra Das Vaishnav, residing at 1a Anushtha Residency, Phase 1, Sector 1 Ward No. 1, Junwani Khamariya Road, Jeora Sirsa Durg – 491 001 in the State of Chhattisgarh within the aforesaid Jurisdiction;

... **Applicant/Petitioner**

-Versus-

Registrar of Companies, Chhattisgarh, Cum Official Liquidator, having its Registered Office at 1st Floor, Ashok Pingley Bhawan, Municipal Corporation, Nehru Chowk Bilaspur C.G. 495 001.

-And-

IVN. No. 1/CB/2024

In the matter of:

An Application to Adjudicating Authority thereby praying to allow the application for intervention;

-And-

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Anushtha Builders and Colonizer Private Limited, a company incorporated under the Companies Act, 1956 and having its Registered Office at- Junwani Khamaria Road Bhilai Durg, 490 020 in the State of Chattisgarh within the aforesaid Jurisdiction;

... **Struck-Off Company**

-And-

Mr. P. Laxmi Kantamma, W/o Late P. Krishna Murti, aged about 77 years, occupation Agriculture, resident of Village Kohka, A. 40, Smiriti Nagar, Street-7, Bhilai, Tehsil and Dist.- Durg (C.G.);

... **Applicant/Intervenor**

-Versus-

Registrar of Companies, Chhattisgarh, Cum Official Liquidator, having its Registered Office at 1st Floor, Ashok Pingley Bhawan, Municipal Corporation, Nehru Chowk Bilaspur C.G. 495 001.

... **Respondent**

Order pronounced on: 30.04.2024

Coram:

Shri P Mohan Raj
Shri Kaushalendra Kumar Singh

Member (Judicial)
Member (Technical)

Appearances (Through Video Conference)

For the petitioner

Mr. Prateek Kohli, CS.
Ms. Shristi Garg, CS
Mr. Sourav Kedia, CS

COMMON ORDER

- 1) **Brief contents of the petition:** This company Petition has been filed by one of the Directors/ Shareholders of **Anushtha Builders and Colonizer Private Limited**. u/s. 252(3) of the Companies Act, 2013 for restoration of name of the struck off company in the Register of Companies, maintained in the office of

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the Registrar of Companies, Chhattisgarh. It is stated that the name of the Company was struck off on 29.08.2018.

- 2) The company was incorporated with the Registrar of Companies, Chhattisgarh on 11.04.2005 under the provisions of the Companies Act, 1956, with CIN U04520CT2005PTC017505, having its registered office situated at: Junwani Khamaria Road Bhilai, Durg, Chhattisgarh, India, 490 020. The Authorized Share Capital of the Company is Rs. 75,00,000/-. The Issued, Subscribed and paid-up Share Capital is Rs. 59,40,000/-. The main objects of the company are to acquire by purchase, lease, exchange, hire or otherwise lands and property of any tenure or any interest in the same and to erect and construct houses, buildings, multi-stories or works on any land of the Company, or upon any other lands or property, and to pull down, rebuild enlarge, alter and improve existing houses building or works thereon to convert and appropriate any such land into and for roads, streets, squares gardens and other conveniences and generally to deal with and improve the property of the Company or any other property.
- 3) The Company was brought to notice that the Said Company had been struck off from the files/register maintained by the Respondent and the Directors of the Company were disqualified from being appointed and to carry as on a Director of any Company in India. Upon coming to know that the Company has been struck off from the register of the Registrar, the petitioner enquired in the office of the professional as to why the statutory filings were not made in time, to which no proper reply was received by the petitioner. The Petitioner states and submits that there was inadvertent mistake due to lack of knowledge with respect to the compliance of the Companies Act. However, the struck off Company took steps to file the same with the Respondent immediately but the Respondent refused to accept it on the ground that the name of the Company has been "Struck Off" from the register. However, from the Balance Sheet it is evident that the Company is carrying on the business and is in operation hence

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it is not defunct as per the meaning of the provisions of the Companies Act, 2013. The Company also had an operative bank account with State Bank of India.

- 4) The Petitioner states that the Company had invested a huge amount of money in land situated at Mouja Khoka P.C. No. 14 Tah District Durg, admeasuring 6.67 hector. The land was successfully registered in the name of the Company which is evident from the Sale Deed annexed hereto and marked as Annexure "A-6". Further, the petitioner states that the land has a house and shed constructed over it.
- 5) The Petitioner further states that in the month of August, 2023, the Petitioner sent his representative to the office of the Respondent to apply for the certified copy of the Annual Returns and Annual Accounts of the Company for documentation purposes for availing credit facilities from banks to expand the current business and for procurement of machinery essential for the purpose of expanding the current production facilities, the Respondent informed to the petitioner's representative that the Company has already been struck off from the file maintained by the Registrar of Companies, Chattisgarh and handed over a copy of the Notice of Striking off and Dissolution under Section 248(5) of the Companies Act, 2013 to the representative of the Company. Thereafter, management is making efforts to expand the current production facilities and the present affairs to the Company were doing well and all employees and other staffs were dependent on the running of the Company for their living. The Appellant then contacted the professional who was entrusted with the job of keeping the compliance of the Company updated as per the provisions of the Companies Act, 2013 and other applicable acts as required from time to time. On full inquiry it was discovered that the said professional has not submitted the Annual Returns with the Registrar within the stipulated time even after the Audited balance Sheets of the Company have been audited for the year ended 31.03.2006 till the year ended 31.03.2022. The copies of the Audited Financial

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Statements for the year ended 31.03.2006 till the year ended 31.03.2022 are annexed hereto and marked as "A-7".

- 6) The petitioner states that the Accounts of the Company were duly Audited and the Financial Statements were drafted timely. Further, the Company has been regular in complying with the Regulatory and Statutory Compliances as evident from the facts that all the necessary filings were filed timely.
- 7) Petitioner further states that delay in filing the Balance Sheets and Annual Returns were unintentional. As per the Companies Act, if there is delay in filing of Balance Sheets and Annual Returns certain formalities has to be complied with, the Company shall comply with the formalities as required under the Act for delay in filing the Balance Sheets and Annual Returns once the name of the Company is restored to the Register.
- 8) The petitioner assures that after the revival of the Company and restoration of the name of the Company, the petitioner shall file all the outstanding statutory documents such as Financial Statements and Annual Return along with the filing fees and the additional fee, as applicable on the date of actual filing and the certified copy of the Tribunal for the restoration of the name of the Company.
- 9) Further, the Company is also regular in filing its Income Tax returns and depositing Income Tax to the credit of the Central Government with the Income Tax Department from time to time. Under this situation, without its restoration in the register of RoC, the Company is unable to operate its day-to-day business activities due to losing its legal status. The Appellant also filed a supplementary affidavit enclosing the copy of the sale agreement dated 18.04.2005 entered between the company and the intervenor. Further filed an additional affidavit stating that upon perusal of the said Annexure -6, this learned Tribunal was of the humble opinion that the document at Annexure-6 is an extract of some document and it does not disclose the entire conveyance deed to enable this learned Tribunal to examine the right, title and interest of

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the company over the said land. Therefore, the Petitioner requested for deferment in order to file the copy of the entire sale deed. On the basis of sale deed the Petitioner acquired development permission which is also duly mentioned in the agreement for sale and on the basis of which the Petitioner made significant investments in the land. Further, the petitioner wants to continue with the work under the company, hence, the revival of the company holds paramount importance. It is an admitted fact in the case that the land bearing P. H. No. 14 Khasra No. 2026 admeasuring 6.67 hectare is situated in village Kohka and is possessed by the Mrs. P. Laxmi Kantamma. The land is situated in the Land Revenue Inspector Division Tehsil and District Durg, which is hereafter referred to as the demised land.

- 10) The petitioner entered into an agreement of sale with the owner of the land Mr. J.Veerabhadra Rao and others on 18.04.2005 in respect of land Khata No.1249 to 1252 and an another agreement of sale with Mrs. P. Laxmi Kantamma on the same date 18.04.2005 in respect of land comprised in part of khata No.2026. The sale deed was not executed by the owner of the land in respect of Khata No.2026 hence the company filed civil suit C.S.No.3A of 2005 on the file of District Judge, Durg, for specific performance of contract, the said suit was dismissed on 17.10.2012, the Appeal No.180 of 2012 preferred before the Hon'ble High Court of Chhattisgarh also dismissed on 01.09.2014. The SLP(c) No.64 of 2015 filed before the Hon'ble Supreme Court of India is still pending.

Submissions by Respondent/RoC.

- 11) The company has failed to file its statutory returns (i.e. Annual Return and Balance sheet/financial statements) with this office since incorporation i.e., for the year ending as on 31.03.2006, 31.03.2007, 31.03.2008, 31.03.2009, 31.03.2010, 31.03.2011, 31.03.2012, 31.03.2013, 31.03.2014, 31.03.2015, 31.03.2016, 31.03.2017 and till date (almost for 18 years), which it was required to file under the provisions of Section 92, 137 of Companies Act, 2013

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(Erstwhile Section 159, 220 of the Companies Act, 1956) within 30 days and 60 days respectively from the date of Annual General Meeting.

- 12) Accordingly, Pursuant to sub-section (1) of Section 248 the Companies Act, 2013 and Rule 3 of the Companies) Rule, 2016, the Registrar of Companies Chhattisgarh issued a notice in writing in Form STK-1 dated 04/01/2018 (enclosed herewith Exhibit B) to the company and all its directors at the addresses available on record. The notice in Form STK-1 is issued to the company on the ground that the company is not 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 a dormant company u/s 455 of the Act. The notice seeks representatives, if any against the proposed action from the company and its directors within a period of thirty days from the date of notice. However, no such reply was received by this office from petitioner Company or its directors in response to the above said notice
- 13) ***Brief contents of the intervening Ivn No.1/CB/2024:*** The Intervenor is the owner of land bearing Khasra No. 2026, area of 6.67 hectares, entered into an agreement with the appellant on 18.04.2005 to sell the land on a consideration of Rs. 12,98,000/- (Rupees Twelve Lakhs Ninety Eight Thousand) per acre out of consideration amount agreed to pay a sum of Rs. 15,00,000/- (Rupees Fifteen Laksh) as an advance. The Petitioner paid a sum of Rs. 4,00,000/- (Rupees Four Lakhs) in cash as an advance and had provided a post dated cheque on 24.04.2005 for balance advance amount. However, the cheque was dishonored on account of insufficiency of funds. Subsequently, the petitioner neither took any steps to pay the balance advance consideration amount nor cooperated with the present Applicant/Intervenor. As a consequence, the present Applicant/Intervenor sent the notice thereby terminating the agreement dated 18.04.2005 and forfeiting the advance amount of Rs. 4,00,000/- (Rupees Four Lakhs). Consequently, the Appellant instituted a suit for specific

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performance of contract against the present Applicant/Intervenor on 18.11.2005, the suit was dismissed by District Judge, Durg, on 17.10.2012, the trial Court dismissed the suit, in respect of execution of sale deed and ordered refund of advance amount with interest. Rs. 4,00,000/- (Rupees Four Lakhs).

Findings:

- 14) Notices were issued to the Registrar of Companies, Chhattisgarh and Income Tax Authority. The Registrar of Companies, Chhattisgarh has submitted a report. It was stated in the report that only after compliance with the requirements to be met under Section 248 of the Companies Act, 2013, the Registrar of Companies, Chhattisgarh has struck off the name of the company from the register. No response was received from the Income Tax Authority.
- 15) The petitioner has asserted and supported their averments with the documents and records showing that the company was in operation and doing business during the period of striking off the name of the company and has produced the following documents about it being in operation and functional during the period of striking off:
 - (i) Copy of STK-7 u/s 248 of the Companies Act, 2013;
 - (ii) Copies of the Return on Income, Agreement of Sale;
 - (iii) Copies of the Audited Balance Sheet of the Company for the year ended 31.03.2006 till the year ended 31.03.2022.
- 16) ROC, Chhattisgarh has not objected to this application for restoration of the name of the company. On perusal of the application, we are satisfied that the name of the company should be restored to the register.
- 17) When the matter is under consideration Mrs. Lakshmi Kantamma who entered an agreement of sale with company dated 18.04.2005 filed an intervention application and wants to make submission. After hearing the counsel to provide an opportunity and to consider her submission intervention application was **ALLOWED** and heard the submission of counsel appeared for the intervenor.

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- 18) The submission of intervenor is heard, the intervenor submitted that she is the owner of the land but the appellant misrepresented before this Tribunal that the company is owner of the land and prayed for restoration of company. On the appellant side admitted the fact as on date no sale deed was executed and the matter is under litigation. The appellant filed the agreement of sale to show that the company invested huge amount in pursuance of agreement of sale and has some interest in the immovable property.
- 19) It is admitted on both sides that now the SLP is pending before the Hon'ble Supreme Court of India. The appellant company initiated the suit in the year 2005 but during the pendency of suit the company was struck off, on 29.08.2018, eventhough the sale deed is not executed in pursuance of agreement of of sale, but the company has certain right over the property, because the trial court ordered for refund of advance amount with interest. Because of pendency of SLP the finality not arrived in the lis. If this company petition is not allowed, the company could not proceed with the pending proceeding before the Hon'ble Apex court. The scope of this appeal is very limited, the existing dispute between the company and intervenor cannot be agitated here. The objection raised by the intervenor to allow this appeal is unsustainable, the intervenor is nothing to do with this petition. In the situation the objection raised by the intervenor is turned down as unsustainable.
- 20) From the records it appears that the company was active when it was struck off, further even other wise we feel it is just and necessary to restore the company to proceed with pending litigations. Therefore this petition deserves sympathetic consideration. Accordingly, the present petition is allowed on the following terms: -
- a) The Registrar of Companies, Chhattisgarh, the respondent herein, is directed to restore the original status of the petitioner company as if the name of the Company had not been struck off from the register of

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- Companies with the resultant and consequential actions like changing status of petitioner company from '**struck off**' to '**Active**'.
- b) The Petitioner Company is directed to file all pending statutory document(s) including Annual Accounts and Annual returns for the period 18 years along with prescribed fees/additional fee/fine as decided by Registrar of Companies, Chhattisgarh within 60 days from the date on which its name is restored on the register of companies maintained by the Registrar of Companies, Chhattisgarh.
- c) Notice may be issued to all the Bankers having bank accounts in the name of petitioner to activate the same which have been ceased now.
- d) The restoration of the Company's name is also subject to the payment of cost of Rs. 25,000/- (Rupees Forty Thousand only) through online payment in www.mca.gov.in under miscellaneous fee by mentioning particulars as "*Payment of cost for restoration of company pursuant to orders of NCLT in C.P. No. 42/CB/2023*".
- e) The petitioner is directed to deliver a certified copy of this order with Registrar of Companies, Chhattisgarh within thirty days of the receipt of this order.
- f) On such delivery and after due compliance with the above directions, the Registrar of Companies, Chhattisgarh is directed to publish the order in the Official Gazette under his office name and seal;
- g) 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 Registrar of Companies, Chhattisgarh to take appropriate action(s) in accordance with law, for any other violations/ offences, if any, committed by the petitioner company prior to or during the period the name of the Company remained struck off.

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- 21) The **C.P. No. 42/CB/2023** is allowed accordingly.
- 22) The Registry is directed to send e-mail copies of the order forthwith to all the parties inclusive of the Counsel.
- 23) Urgent certified copy of this order, if applied for be issued upon compliance with all requisite formalities.



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Kaushalendra Kumar Singh
Member (Technical)



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P. Mohan Raj
Member (Judicial)

Signed on this 30th day of April, 2024.

Kaushal p.s.