

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

COURT – IV

46.

CP/117(MB)2021

CORAM:

SHRI MANOJ KUMAR DUBEY
MEMBER (Technical)

SHRI KISHORE VEMULAPALLI
MEMBER (Judicial)

ORDER SHEET OF THE HEARING HELD ON **09.11.2022**

NAME OF THE PARTIES:

Ms. Ilmi Kuuskaru

Vs

Registrar Of Companies Goa Daman And Diu

SECTION: 252 (3) OF THE COMPANIES ACT, 2013

ORDER

The Court is convened through Video Conference.

1. Mr. Pramod S. Shah, Ld. Counsel for the Petitioner present.
2. This Company Petition is filed by Ms. ILMI Kuuskaru on behalf of ILMI Holiday Homes Private Limited (CIN: U55101GA2007PTC005470), under Section 252(3) of the Companies Act, 2013 praying for restoration of the name of the Company to the Register of Companies maintained by the Registrar of Companies, Goa Daman and Diu.
3. The Petitioner submits that the company was incorporated on 17/10/2007 under the Companies Act, 1956 as a private company limited by shares with the Registrar of Companies, Goa Daman and Diu. There are two directors in the company viz. Ms. Ilmi Kuuskaru (DIN: 01641821) Mr. Blasio Anthony Braz, (DIN: 01719407) as per MCA Data.
4. The grievance of the Petitioner Company is that the Respondent, Registrar of Companies, Goa Daman and Diu struck off the name of the Petitioner

Company from the Register of Companies maintained by them by issuing notice in Form STK-1, STK-5 and STK-7 under section 248(4)(1) for removal of the name of the Company from the Register of Companies under section 248(1) of the Companies Act, 2013 and rule 3 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 due to defaults in statutory compliances, namely, failure to file Financial Statements and Annual Returns and failure to do business for more than two years.

5. The Petitioner Company submits that due to non-acquisition of the property i.e. 'Borcachem Madem' and pending proceeding before the Civil Court of Goa, the company could not commence its business since its incorporation. However, post the untimely demise of Mr. Blasio Anthony Braz on 2nd January 2013, Ms. Illmi Kuuskaru, who is an Estonian Citizen found it challenging to appoint a new Residential Director to comply with the requirements of the Act of having at least two directors in a private limited company. As submitted by the Ld. Counsel appearing for the Petitioner company, the Company did not file the Annual Returns and Balance Sheet of the company with the RoC from 2012-13 onwards due to inadvertence. The Petitioner Company has been struck off by RoC on 13.07.2017. Even while considering the defaults as submitted by the Counsel, there is a default of five (05) years till striking off the Company. Taking into consideration further delay of four (4) years in filing the present Petition, total years of default is 09 years.
6. The Petitioner Company has neither enclosed the Audited Accounts for the Financial Years from 2012-13 to 2020-21, nor enclosed copies of the Acknowledgement of Income-Tax Returns filed with the Income-Tax

Authorities for the Financial Years from 2012-13 to 2020-21 along with the Company Petition.

7. The Respondent has filed its report and reiterates that the name of the Company was struck off as the company was not carrying on any business or operation for a continuous period of more than two years. Also, confirms that no filing is done since incorporation of the Company. Also, observed that if the Petitioner proves that it is carrying business, this Tribunal at its discretion, may allow the petition imposing exemplary costs.
8. Taking into consideration the above facts and circumstances including the observations made by the RoC in its report, we are taking a lenient view towards the prayer sought by the Petitioner company and considering to allow the Petition in view of the submission of the Petitioner Company that it has reached a verbal settlement with Vendor 2 for acquiring the property stated in the Deed of Sale and that now the company would be in a position to commence its business.
9. Accordingly, Company Petition bearing No.: CP-117/252(3)/MB/2021 filed by the Petitioner, ILMH Holiday Homes Private Limited, represented by its Director; Ms. ILMH Kuuskaru, under section 252 of the Companies Act, 2013, seeking restoration of the Company's name in the Register of Companies maintained by the Registrar of Companies, Registrar of Companies, Goa Daman and Diu is **allowed** on the following terms:-
 - (a) The Respondent Registrar of Companies, Registrar of Companies, Goa Daman and Diu, is directed to restore the name of the Petitioner Company, *viz.* ILMH Holiday Homes Private Limited, to the Register of Companies subject to payment of a sum of Rs.4,50,000/- (Rupees Four

Lakhs Fifty Thousand only) as cost to be paid online through “*Bharatkosh*” in favour of “Pay and Accounts Officer, Ministry of Corporate Affairs, Mumbai” within thirty days from the date of receipt of a copy of this Order; and

- (b) Upon such restoration, the Petitioner Company shall file all its pending financial statements and Annual Returns with all the applicable fees and late fees with the Respondent Registrar of Companies within thirty (30) days from the date on which the name of the Company is restored to the Register;

failing which, this order will stand vacated automatically.

10. Upon restoration of the name of the Petitioner Company to the Register of Companies after complying with the terms mentioned above, the Registrar of Companies, Goa Daman and Diu, shall issue appropriate communications to the bank authorities for de-freezing the accounts of the Petitioner Company.

Sd/-

MANOJ KUMAR DUBEY
Member (Technical)

Sd/-

KISHORE VEMULAPALLI
Member (Judicial)