

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

**ITEM No.24  
C.P.No.22/BB/2023**

**IN THE MATTER OF:**

Income Tax Department ... Petitioner  
Vs.  
ROC, Karnataka & M/s. Sri Yoga Varun ... Respondents  
Constructions Pvt. Ltd.

**Order under Section 252 (3) of CA, 2013**

**Order delivered on 15.03.2023**

**CORAM:**

**JUSTICE (RETD.) T. KRISHNAVALLI  
HON'BLE MEMBER (JUDICIAL)**

**SH. MANOJ KUMAR DUBEY  
HON'BLE MEMBER (TECHNICAL)**

**PRESENT:**

For the IT Dept. : Shri Ganesh R Ghale

**ORDER**

1. C.P.No.22/BB/2023 is filed by the Income Tax Department on 01.03.2023 vide Diary No.00360 dated 01.03.2023, seeking to direct the Respondent No.1 to restore the Respondent No.2 Company namely M/s. Sri Yoga Varun Constructions Private Limited so as to enable the Income Tax Dept. to take necessary action to recover the dues from the Company.
2. Brief facts of the case are that the R-2 Company has been Struck-off by the ROC on 17.07.2017 for not fulfilling its statutory obligations under the provisions of the Companies Act, 1956. Further, R-2 Company is found to have carried out its business activities during the AYs.2014-2015 and 2018-2019 and has made transaction of Rs.2,23,00,000/- during the A.Y 2014-2015 and Rs.6,27,93,100/- during the A.Y 2018-2019, therefore there is an obligation on the R-2 Company to offer for taxation of Rs.2,23,00,000/- for the A.Y 2014-2015 and Rs.6,27,93,100/- for the A.Y 2018-2019. The Struck-off Company has

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committed violations of provisions of the Income Tax Act, 1961, by not fulfilling its statutory duty of filing return of income, despite having considerable income chargeable to tax under the IT Act. Further, the revenue is not in a position to conclude the assessment proceedings initiated U/s.148 of the IT Act, 1961, for the AYs 2014-2015 and 2018-2019, since the R-2 Company has been struck-off from the Register maintained by the ROC. It is stated that the same is contemplated in the aforesaid Company for which restoration is necessary due to a few judicial decisions holding that no assessment can be completed in respect of Struck-off Companies. Therefore, to protect the interest of the revenue, it is requested to get the R-2 Company restored under the provisions of Section 252 of the Companies Act, 2013. Further, a memo has been filed vide Diary No.1455 dated 14.03.2023 requesting for urgent hearing since the time limit for completing the Assessment processing initiated U/s.147 was expiring on 31.03.2023.

3. Heard Shri Ganesh R Ghale, learned Counsel for the Petitioner and have perused the records.
4. It is a matter of record that the ROC has struck-off the name of the R-2 Company mentioned above as per its order dated 17.07.2017 bearing Notice No.STK-7/ROC (B)/2017/1. Further, it is an established legal principle that no Income Tax Assessment can be carried out in respect of a Struck-off Company, thereby causing loss of legitimate revenue. Moreover, there is a limitation of 31.03.2023 for completion of the reopened assessments U/s.147 of the IT Act as stated in the Interim Relief sought in the Petition. However, it is noticed that the prayer for interim relief has been wrongly made in the Application for stay of order dated 17.07.2017, passed by the ROC for striking-off the Company. An Order passed by the ROC on 17.07.2017 cannot be stayed after so much of delay. Another interim prayer sought by the Counsel is that the restoration of the Company was necessary to enable the Income Tax Department to recover the dues from the Company, is also wrongly worded; as the Assessment is still pending. However, in public interest and interest of Government revenue, we direct that R-2 would be

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deemed to be restored to its original number, as an interim relief, so as to enable the Petitioner herein to proceed further to complete the Assessment proceedings already initiated in accordance with law.

5. The ROC shall update its website by showing the R-2 Company is in operation and thus it stands restored on the Register maintained by the ROC until further orders. However, this is an interim order, till the final order in the instant case is passed U/s.252 of the Companies Act, 2013.
6. Issue Notice to the ROC and the R-2 Company. The Registry is directed to prepare notice and learned Counsel for the Petitioner is permitted to collect the notice from the Registry and serve it personally on the aforesaid Authority/Company along with copy of Company Petition and material papers through email as well as by speed post and is directed to file proof of service in the Registry within three weeks'.
7. If the notice sent to the Respondent through speed post, is not served, the Petitioner is also permitted to adopt the substitute mode of service by way of paper publication in two daily newspapers i.e. one in English and one in Kannada having wide circulation in the area, and to file an affidavit of service along with paper clippings within three weeks from the date of publication of notice as the case may be.
8. A period of three weeks' time is granted to the Respondents for filing reports/replies from the date of receipt of notice and two weeks' for filing responses/rejoinder by the Petitioner, if any, thereto from the date of receipt of copy of replies/reports is granted.
9. List the case on **23.05.2023**.

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**MANOJ KUMAR DUBEY  
MEMBER (TECHNICAL)**

**-SD-**

**T. KRISHNAVALLI  
MEMBER (JUDICIAL)**