IN THE NATIONAL COMPANY LAW RIBUNAL, DIVISION BENCH – II, CHENNAI

CP/132(CHE)2022

(Under Section 252(3) of the Companies Act, 2013)

In the matter of **M/s. INNO REAL PRIVATE LIMITED**

Mr. RAVISHANKAR RAMASWAMY,
In the capacity of Shareholder of
M/s. Inno Real Private Limited
CIN: U45400TN2009PTCO73549
Reg. Off:
New No. 5, Old No.3,
Giri Road, T. Nagar, Chennai-600 017 ... Petitioner

-Vs-

THE REGISTRAR OF COMPANIES,
Block No.6, B-Wing
2nd Floor, Shastri Bhawan,
26, Haddows Road,
Chennai-600 006 ...Respondent

*Order pronounced on **15th March, 2023***

CORAM :

SANJIV JAIN, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)

For Petitioner : Mr. M. Rathinakumar, PCS
For Respondent : Mr. Avinash Krishnan Ravi, Advocate

O R D E R

***Per:* SANJIV JAIN, MEMBER (JUDICIAL)**

This Application/Petition under Section 252(3) of the Companies Act, 2013 has been filed by Mr. Ravishankar Ramaswamy, one of the Shareholders of **M/s. Inno Real Private**

Limited for seeking restoration of the name of the Company **M/s. Inno Real Private Limited** on the Register of Companies maintained by the Registrar of Companies, Chennai.

2. As per the averments made in the application/petition, the Company M/s. Inno Real Private Limited was incorporated under the Companies Act, 1956 on 16.11.2009 vide CIN: U45400TN2009PTCO73549 as a Private Company Limited by shares with the Registrar of Companies, Chennai. The Applicant/Petitioner is the shareholder of M/s. Inno Real Private Limited since 16.11.2009. The Company started its business as mentioned in the Memorandum of Association as well as in the Articles of Association. The main objects of the Company was to carry on business of *contractors, bidders, town planners, infrastructure developers, estate developers and engineers land developers, land scapers, estate agents or any other immovable property in India or abroad etc. as per* ***ANNEX-1.*** Its Authorized Share Capital was Rs.10,00,000/- (Rupees Ten Lakhs only) with 1,00,000 Equity Shares of Rs.10/- each. It's issued, subscribed and Paid-Up share capital was Rs. 1,00,000/- (Rupees One Lakh only) with 10,000 Equity Shares of Rs.10/- each. Its shareholding pattern as per the last filed annual accounts as on 31st March, 2015 is stated in para 'E' of the application.

3. It is stated that the Company filed all the annual accounts and annual returns till the Financial Year ended on 31st March 2015 i.e. E-forms AOC-4 for the Financial Year 2104-15 and E-Forms MGT-7 for the Financial Year 2015-16 and list of shareholders as **ANNEX-2.**

4. It is stated that due to lack of professional guidance, the Company did not file E-forms and the pending applications though

it has been conducting Annual General Meeting every year and Board Meetings as required under the Companies Act. It also has cash and bank balance in the account during the period from 2016-2021. It is stated that the Company has also been filing Income-Tax Returns as required under the Income-Tax Laws. (Copy of the audited accounts for the Financial Year ended 31st March, 2016 to 31st March, 2021 and the copy of IT Return filed as **ANNEX-3).**

5. It is stated that the Respondent had issued notice under Section 248(1) of the Companies Act, 2013 to various companies including the Petitioner Company dated 02.08.2019 for initiating action for striking off the name of the company under Section 248 of the Companies Act, 2013. It is stated that the Petitioner company came to know about the striking off the name of the company from the Register of Companies/Respondent through the said notice. (Copy of STK-5 is appended as **ANNEX-4.)**

6. It is stated that the Company was incorporated for carrying out the construction activities. However, striking off the name of the company under Section 248 of the Companies Act 2013 has hampered its operations. It is stated that the Company needs be restored to continue in carrying on its business lest the company will be put into serious loss. It is stated that the assets of the company are intact and the company never become defunct nor a situation arose for winding up of its business. It has remained functional from the date of its incorporation. It cannot be thus concluded that the company is a defaulter for non-functional or a defunct company. It is stated that the application is within limitation and the matter regarding this application is not pending before any Tribunal or any other authority. The Petitioner has also annexed the copy of the banking operations during the period

ended from 2015 to 2019 as **ANNEX-5** and online payment in the account of the petition filed by M/s. Inno Real Private Limited as **Annex-7**. The Petitioner has also filed Form STK-7 which is dated 14.02.2022.

7. On getting notice of the petition/application, the Respondent i.e. the Registrar of Companies filed its reply wherein it reiterated what has been stated about the incorporation of the company and objects of the company. It is stated that the company has not filed its financial statements since the Financial Year 31.03.2016 till the year the name of the company was struck off. It referred Section 248(1)(c) of the Companies Act, 2013 to state that the name of the company shall be removed from the Register of the Companies by the Registrar of Companies if the company is not carrying on any business or operation for a period of two immediate preceding Financial Years and has not made any application within such period for obtaining the status of a dormant company under Section 455 of the Act. It is stated that since the company failed to follow the statutory compliances as provided under Section 92(4) and Procedural compliances as provided under Section 455 of the Companies Act, 2013, it gave a reason for the Registrar of the Companies to believe that the company was inoperative. It is also stated that the Company has not filed the financial statements for the Financial Years 2015-16 to 2020-21 nor the Company or its director filed the statutory returns in compliance with the provisions of the Companies Act. It is stated that the Registrar of Companies had issued the notices (STK-1) to the Companies as well as directors under Section 248(1) of the Companies Act., 2013 read with Rule 7 of the Companies (Removal of name of the companies from the registrar of companies) Rules, 2016 and thereafter the name was struck off from the Register which was

published in the Gazette of India dated February 19 – February 25 2022 under S. No. 16.

8. It is alleged that the reason furnished in the petition cannot be considered as cogent one because filing of annual return and balance sheet is a statutory duty for every company incorporated under the Companies Act. It has however admitted that the petitioner has submitted income-tax return acknowledgements for the Assessment Years 2016-17 till 2021-22 as a proof that company was functioning during the period of default.

9. We have heard Ld. Practising Company Secretary Mr. M. Rathina Kumar for the Applicant/Petitioner and Ld. Counsel Mr. Avinash Krishnan Ravi for the Registrar of Companies/Regional Director and perused the record.

10. A perusal of record reveals that the Petitioner Company was incorporated on 16.11.2019. The Petitioner/Applicant is one of the shareholders of the Company. Its authorized share capital was Rs.10 Lakhs. After its incorporation, the Company from time to time had filed the annual accounts and annual returns till the Financial Year ended 31st March, 2015 along with E-forms, AOC-4 for the Financial Year 2014-15, E-forms and MGT-7 for the Financial Year 2015-16 and the List of the Shareholders as evident from Annexure-2. It had also been conducting Annual General Meeting every year and Board Meetings. It has been filing Income-Tax Returns and its accounts were also audited for the Financial Years ended 31st March, 2016 to 31st March, 2021. It has been operating the bank account and has cash and bank balance in the account during the period from 2016 to 2021. It is also seen that audited statement of Profit and Loss for the Financial Year ended 31.03.2021 has been attached at Page No.162 of the application.

A perusal of the same reveals that company reported revenue of Rs.19.00 Lakh and has earned net profit of Rs.1.42 Lakh, as such it appears that the Company was continuing its operations in period of 2 years before issue of STK-7 which is dated 14.02.2022.

11. Section 252(3) of the Companies Act, 2013 provides that if a company, or any member or creditor or workman thereof feels aggrieved by the company having its name struck off from the register of companies, the Tribunal on an application made by the company, member, creditor or workman before the expiry of twenty years from the publication in the Official Gazette of the notice under sub-section (5) of section 248 may, if satisfied that the company was, at the time of its name being struck off, carrying on business or in operation or otherwise it is just that the name of the Company be restored to the register of companies, order the name of the Company to be restored to the register of companies, and the Tribunal may, by the order, give such other directions and make such provisions as deemed just for placing the company and all other persons 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.

12. From the records placed with the application/petition, it is clear that the Company was at the time of its name being struck off was carrying on business/operation. It was regularly conducting Annual General Meeting and Board Meetings and filing Income-Tax Returns. Its accounts were duly audited even after its name was struck off by the Registrar of Companies vide notice dated 02.08.2019. This petition has been filed within limitation as provided under Section 248(5) of the Companies Act, 2013. The Applicant/Petitioner has also given reasons for not filing the

financial statements as per the provisions of the Companies Act which made the Respondent striking off the name of the company from the Register of Companies.

13. From the documents, it is clear that the Applicant Company had/ has every intention to continue and carry on business but because of lack of professional guidance and inadvertence, it could not make the statutory compliances as provided under the Act. Its assets are intact and the company never became defunct nor a situation arose for winding up of its business. It has been operating its accounts so it cannot be said that it remained non-functional or defaulter.

14. It was held in the case of ***Panjwani vs. Registrar of Companies & Anr. in Company Petition No.174/2013 by the Delhi High Court vide order dated 2nd December, 2013.***

> *"Quite apart from the above position, the sub-section recognizes that if the Court is of opinion that it is "otherwise just" that the company be restored to the register, restoration can be ordered. The argument addressed on behalf of the ROC to the effect that the word "just" has to be understood in the background of the specific language of the sub-section on the basis of the principle of ejusdem generis does not appeal to me. As I read the sub-section, there are two situations in which the company court can order restoration. One is when the company was carrying on business or was in operation at the time of striking off its name. The second situation, which is an alternative situation, is one where it appears "just" to the company court that the name of the company be restored to the register. I do not see any scope for the application of the rule of ejusdem generis because of the presence of the words "or otherwise" between the words providing for the two*

types of situations. The presence of the words "or otherwise" denotes that even if the company was not carrying on any business on was not in operation at the time of striking off, it is still open to the company court to order restoration if it appears to the Court to be "otherwise just". I may add that the words "or otherwise" have not been generally construed ejusdem generis as seen from the judgments of the Supreme Court in Lilawati Bai vs. State of Bombay: (AIR 1957 SC 521) and Kavallappara Kottarathil Kochuni v. State of Madras (AIR 1960 SC1080). Copy of judgment has been enclosed as ANNEX-6). Petitioner humbly submits that this Hon'ble Tribunal may consider the above and order for the revival of the Company."

15. For the aforesaid reasons, we are of the considered opinion that it would be just and proper if the name of the company be restored to the Register of Companies. We hereby order for restoration of the name of the company in the register maintained by the Respondent subject to the following directions:

a) That the company shall file all pending financial statements and annual returns till date within 30 days from the date of the order;

b) That the shareholders of the Company shall give an undertaking that the accounts of the Company were not used as means to target tainted money during the period of demonetization;

c) That the Petitioner Company shall not use this order before any legal forum to remove the disqualification incurred upon it if any as per Section 164 of the Companies Act, 2013;

d) That all compliances are made by the Company and that the Company shall not alienate or dispose of any of its valuable assets.

16. The restoration of the Company name is also subject to the payment of cost of **Rs.2,00,000/-** (Rupees Two Lakhs only) through online payment in www.mca.gov.in under miscellaneous fees by mentioning the particulars as "payment of cost for revival of Company". It is made clear that this order allowing the petition shall not circumscribe the power of the Respondent to proceed against the Petitioner Company and its Directors as mandated for alleged late filing of any forms, documents, returns and such other compliance under the provisions of Companies Act, 2013.

17. The Petition stands **Allowed** on the aforementioned terms and **disposed of.**

-SD-

SAMEER KAKAR
Member (Technical)

-SD-

SANJIV JAIN
Member (Judicial)

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