

34

**NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
AHMEDABAD**

**T.P. No.61/560(6)/NCLT/AHM/2017(New)  
C.P. No. 131/560(6)/NCLT/AHM/2016(Old)**

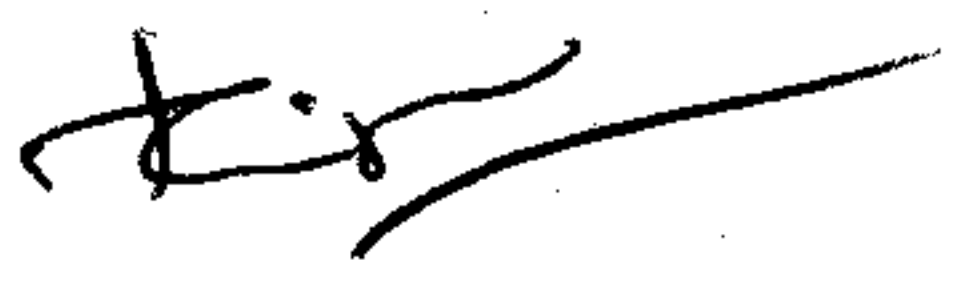
Coram: **Hon'ble Mr. BIKKI RAVEENDRA BABU, MEMBER JUDICIAL  
Hon'ble Ms. MANORAMA KUMARI, MEMBER JUDICIAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD  
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 21.02.2018**

Name of the Company: Faisal Abdul Gaffar Kapadia & Ors.  
V/s.  
Registrar of Companies

Section of the Companies Act: Sections 560(6) of the Companies Act, 1956

<b>S.NO.</b>	<b>NAME (CAPITAL LETTERS)</b>	<b>DESIGNATION</b>	<b>REPRESENTATION</b>	<b>SIGNATURE</b>
--------------	-------------------------------	--------------------	-----------------------	------------------

1.	NAVIN PAHWA	SR-ADV	Petitioner	
----	-------------	--------	------------	---

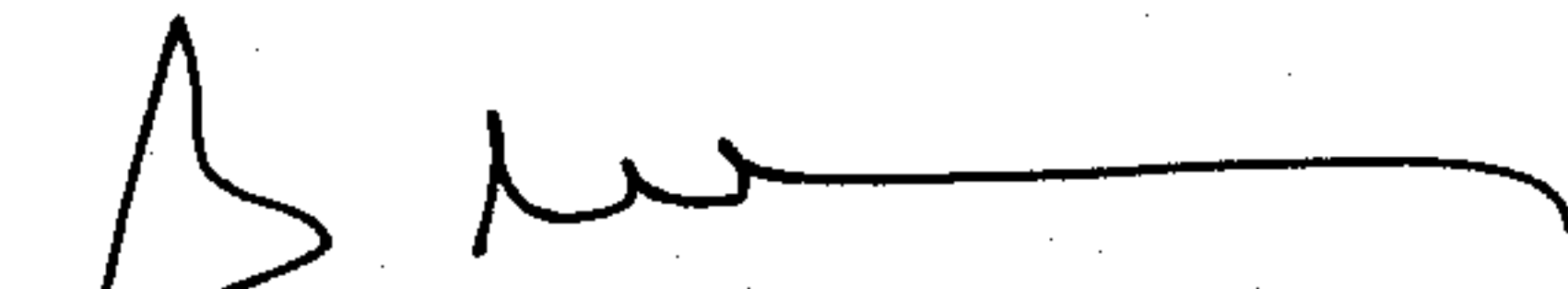
2.	WITH RITU SHAH FOR THAKKAR AND PAHWA	ADV.		
----	---	------	--	--

**ORDER**

Learned Senior Advocate Mr. Navin Pahwa with Learned Advocate Ms. Ritu Shah present for Petitioners. None present for Respondent and Intervener.

Order pronounced in open court. Vide separate sheets.

  
**MANORAMA KUMARI  
MEMBER JUDICIAL**

  
**BIKKI RAVEENDRA BABU  
MEMBER JUDICIAL**

Dated this the 21st day of February, 2018.

**NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH**

**T.P. No. 61/560(6)/NCLT/AHM/2017 (New)**

**C.P. No. 131/560(6)/NCLT/AHM/2016 (Old)**

**[Tfd. From Hon'ble High Court of Gujarat]**

**In the Matter of:**

1. Faisal Abdul Gaffar Kapadia  
S/o Abdul Gaffar Kapadia,  
Director,  
Kamran Kapadia Land  
Developers Pvt. Ltd.,  
11/823-824, Chowk Bazar,  
Surat-395003
2. Anisha Faisal Kapadia  
W/o Faisal Kapadia  
Director,  
Kamran Kapadia Land  
Developers Pvt. Ltd.,  
11/823-824, Chowk Bazar,  
Surat-395003
3. Faridabanu Abdul Gaffar Kapadia  
W/o Abdul Gaffar Kapadia,  
Director,  
Kamran Kapadia Land  
Developers Pvt. Ltd.,  
11/823-824, Chowk Bazar,  
Surat-395003

: Petitioners.

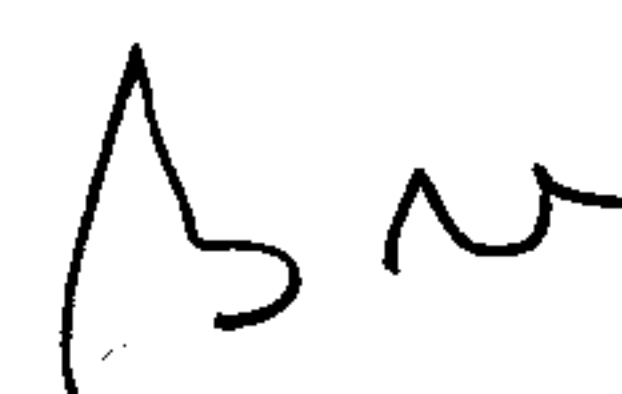
Versus

1. Registrar of Companies  
Office of the Registrar of Companies,  
ROC Bhavan, CGO Cmplx,  
B/h. Ankur Bus Stop,  
Opp: Rupal Park Society,  
Naranpura,  
Ahmedabad.
2. Abdul Wahab Turab Shah

: Respondent.

: Intervener



 Page 1 | 16

Order delivered on 21<sup>st</sup> February, 2018.

**Coram: Hon'ble Sri Bikki Raveendra Babu, Member (J) – And  
Hon'ble Ms. Manorama Kumari, Member (J).**

**Appearance:**

Mr. Navin Pahwa, learned Senior Advocate with Ms. Ritu Shah, learned Advocate for the Petitioner.

Mr. Manan Paneri, on behalf of Mr. Bhargav Karia, learned Advocate for Intervener.

None present for Registrar of Companies.

**ORDER**

**[ Per: Hon'ble Sri Bikki Raveendra Babu, Member (J) ]**

1. Petitioners No. 1 to 3, claiming to be Directors of Kamran Kapadia Land Developers Pvt. Ltd., filed Company Petition No. 131 of 2016 before the Hon'ble High Court of Gujarat under Section 560 sub-section (6) of the Companies Act, 1956 seeking restoration of the name of M/s. Kamran Kapadia Land Developers Pvt. Ltd., against the Registrar of Companies, Gujarat ("ROC") for short.

2. During the pendency of the said Company Petition before the Hon'ble High Court of Gujarat, Abdul Wahab Durab Shah filed Company Application No. 347 of 2016 raising objections for restoration of the name of M/s. Kamran Kapadia Land Developers Pvt. Ltd., in the Register of Companies maintained by the ROC, Gujarat. Company Petition No. 131 of 2016 along with Company Application No. 347 of 2016 were transferred from Hon'ble High

*Abdur*

*Page 2 | 16*

Court of Gujarat to this Tribunal in view of Rule 3 of the Companies (Transfer of Pending Proceedings) Rules and by virtue of the order of the Hon'ble High Court of Gujarat dated 10.3.2017.

3. This Tribunal renumbered Company Petition No. 131 of 2016 as 'TP No. 61 of 2017' and Company Application No. 347 of 2016 as 'TP No. 61-A of 2017'.

4. The Intervention Application filed by Mr. Abdul Wahab Durab Shah vide TP No. 61-A of 2017 was disposed of by this Tribunal on 7.9.2017 permitting the Intervening Applicant to file Objections, if any, in TP No. 61 of 2017. Accordingly, Mr. Abdul Wahab Durab Shah, filed objections. The ROC also filed Representation before this Tribunal.

5. The facts, that require for determination of the issue relating to the restoration of M/s. Kamran Kapadia Land Developers Pvt. Ltd., (hereinafter referred to as "the Company") are as follows;

5.1. The Company was incorporated on 23.2.2001. The Company was registered with the Office of the ROC, Gujarat. The Authorised Share Capital of the Company has been Rs. 5,00,000/- divided into 50000 equity shares of Rs. 10/- each. The Paid-Up Equity Share Capital has been Rs. 1,50,000 divided into 15,000 equity shares of Rs. 10/- each.

*Kamran*

*B N*

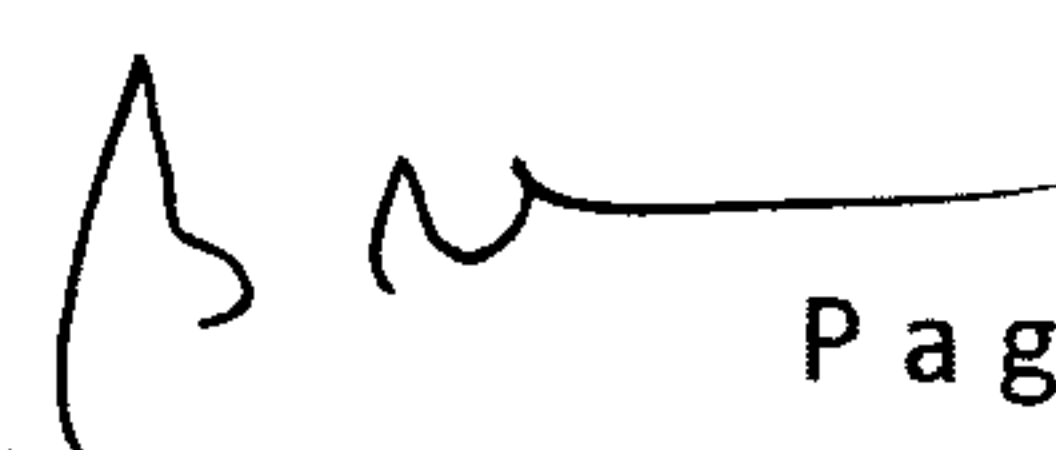
5.2. The Company has been engaged in the business of real estate and construction. The Company had entered into an Agreement with third parties which led to dispute and litigation is pending before the Hon'ble High Court of Judicature, Bombay at Aurangabad Bench. Petitioners could not file statutory returns with the ROC.

5.3. It is stated by the Petitioners that recently when they tried to upload statutory returns with the MCA Portal, the MCA Portal did not accept the documents. Thereafter, Petitioners approached the office of ROC and after some efforts came to know that the name of the Company has been struck off under Section 560 sub-section (5) of the Act.

5.4. Thereafter, Petitioners came to know about the Notification dated 14.2.2008 and the copies of three notices all dated 22.8.2007 purportedly issued by ROC under the provisions of Section 560 sub-section (1), (2) and (3) of the Act.

5.5. According to the Petitioners they have not received any notice from the ROC. Petitioners also did not receive the copy of the impugned notification-cum-order dated 14.2.2008 whereby the Company was struck off.

5.6. It is stated by the Petitioners that there is non-compliance of requirements of Section 560 of the Act in striking off the name of



the Company. It is further stated that the provisions of Section 560 of the Act and its various stipulations are mandatory in nature.

5.7. Further, it is the case of the Petitioners that the Company can undertake business operation and it has got business potentials provided the name of the Company is restored as per the provisions of Section 560 of the Act. Petitioners further stated that shareholders and directors of the Company are desirous to carry on the business activities of the Company. The Company has got large parcel of land and therefore the Company can avail financial assistance. It is stated that the Company is a closely held Company and there are no stakes of outsiders, and there are no exposure of Banks or financial institutions.

6. The objections of the Intervening Applicant are as follows;

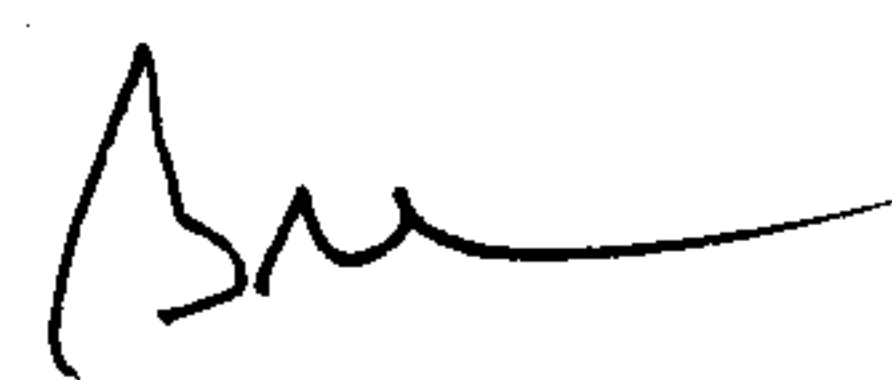
6.1. Intervening Applicant is one of the Defendants in Special Civil Suit No. 34 of 2012 filed by the Company for specific performance of contract against one Mr. Laxman Wagh and others. Intervening Applicant purchased land admeasuring 2 hectares 40 acres in Survey No. 430 situated at Wadjai Road, Dhule, Maharashtra, from the original owner on 12.9.2007 and mutation entry No. 50983 was already effected in the revenue records. According to the Intervener, the Company filed the Suit for specific performance against the original owners alleging that the original owners executed an Agreement of Sale in respect of land purchased



by the Applicant Intervener in the year 2009. According to the Applicant Intervener, by the date of filing of Special Civil Suit No. 34 of 2012 by the Company, the Company's name was struck off from the Register of Members, but the Company concealing the said fact filed the Suit. The Intervening Applicant being one of the defendants in the said Suit sought for rejection of the Suit by filing an Application in the Civil Suit. According to the Applicant Intervener in order to defeat the Application filed by the Intervening Applicant herein in the Civil Suit questioning the maintainability of the Suit the Company came up with the Company Petition No. 131 of 2016 (TP No. 61 of 2017) for restoration of the name of the Company.

6.2. The Intervening Applicant further stated that the Application filed by him was allowed by the learned 2<sup>nd</sup> Joint Civil Judge (SD), Dhule, vide Judgment and order dated 1.4.2017 and thereby Special Civil Suit filed by the Applicant for specific performance was dismissed by the learned Court. Aggrieved by the said Judgment and order dated 1.4.2017 passed by the learned Civil Judge (SD), Dhule, Petitioners herein preferred First Appeal No. 1635 of 2017 before the Hon'ble High Court of Judicature, Bombay at Aurangabad.

6.3. The Intervening Applicant further stated that the Company has not produced any document to show that the Company is in existence after 1.4.2007. It is stated by the Intervening Applicant that the Petitioners failed to show that the Company at the



time of striking off was carrying on business or any operation nor it is shown that after 1.4.2007 the Company has carried on its business or is in operation or otherwise till April 2016 when the company petition is filed before the Hon'ble High Court of Gujarat under Section 560(6) of the Companies Act, 1956. It is stated by the Intervening Applicant that if the Company is restored it will cause prejudice to him in the First Appeal No. 1635 of 2017 pending before the Hon'ble High Court of Judicature, Bombay. It is stated by the Intervening Applicant that the Petitioners concealing the fact that the Company was struck off filed the Civil Suit after the Company was struck off.

7. Petitioners stated that Intervening Applicant is neither a Director nor a Member nor a Creditor of the Company and therefore he has no locus standi to oppose the Petition filed under Section 560 of the Companies Act, 1956 for restoration of the name of the Company in the Register of Companies maintained by the Registrar of Companies.

7.1. It is the plea of the Petitioners, the very fact that the Company filed a Civil Suit for specific performance of contract has to be taken into consideration for restoring the name of the Company.

8. Section 560 sub-section (1)(2) and (3) lays down the procedure to be followed by the Registrar to strike defunct Company off the Register.


*Atkari*

*Bu*

9. It is stated in sub-section (1) of Section 560, if the Registrar has reasonable cause to believe that Company is not carrying on business or in operation, he shall send to the Company by post a letter enquiring whether the Company is carrying on business or in operation. Thereafter as laid down in sub-section (2) of Section 560, the Registrar shall wait for one month for reply from the Company. Thereafter, within 14 days after the expiry of one month ROC shall send a notice by a Registered Post referring to the first letter stating that no answer has been received for the first letter and if no answer is received for the second letter also within one month from the date of second letter a notice will be published in the Official Gazette with a view to striking the name of the Company.

10. Sub-section (3) of Section 560 says, in case if the Registrar did not receive any reply within one month or if Registrar receives an answer from the Company to the effect that it is not carrying on business or in operation then Registrar shall publish in the official gazette and send to the Company a notice that after expiry of 3 months from the date of that notice the name of the Company would be struck off from the Register and the Company will be dissolved.

11. In the case on hand, as can be seen from the Notification No. 324 dated 14.2.2008 and the 3 notices dated 28.2.2007 issued under Section 560 (1), (2) and (3) show that ROC did not adhere to



the procedure contemplated under Section 560(1), (2) and (3) of the Companies Act, 1956.

12. Section 560 sub-section (6) enables the Company or any member or creditor aggrieved by the order striking off the Company passed by the ROC are entitled to file an Application before the Tribunal within 20 years from the date of striking off the Company. Section 560 sub-section (6) says that the Tribunal may restore the name of the Company to the Register if the Company was carrying on business or in operation.

13. Section 560(6) further says that the Company can be restored if it is just that the Company be restored to the Register.

14. In this context, it is necessary to refer to the following decisions on this aspect;

(a) Decision of **Hon'ble Delhi High Court** in **Company Petition No. 200 of 2011** in the matter between **Siddhant Garg. Vs. Registrar of Companies**, reported in **2012 SCC Online Del.802**;

In the above decision, the Company was struck off from the Register of Companies under SES of 2003. The Creditors of the Company filed a Petition aggrieved by the said striking off. In that decision, in Para No.16 after perusing Section 560, it is held as follows;

*"16. From a perusal of the said Section, it is apparent that this Court on an application filed either by the company or by any shareholder or by a creditor can restore the*

*Shun*

*B N* Page 9 | 16


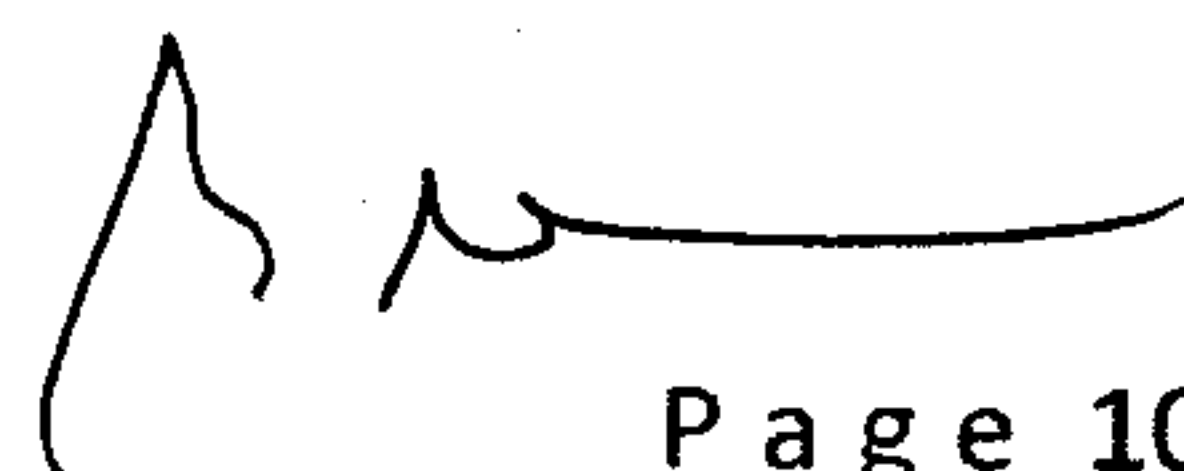
*company, provided it is carrying on business or if this Court is convinced that it is 'just' to restore the company."*

(b) Decision of **Hon'ble High Court of Madhya Pradesh** in the matter between **Vibrij Fiscal Services P Ltd. And Registrar of Companies** reported in **LAWS (MPH) 2010 (2) 119.**

In the above decision, the Company basing on the Resolution of the Board of Directors made an application before the ROC under SES framed by the Government of India under Section 560 of the said Act. The Registrar in exercise of his powers under Section 560(3) of the Act declared the company "defunct" and published the said declaration in the Official Gazette in terms of the provisions contained in Section 560 of the Act. In that case, shareholders of the company took a joint decision and decided to revive the company and accordingly filed a petition under Section 560(6) of the Act seeking a direction to the ROC to restore the Company. The Hon'ble Madhya Pradesh High Court allowed the petition for restoration and directed the Registrar accordingly.

(c) Decision of the **Hon'ble High Court of Andhra Pradesh** in Company Petition No. 250 of 2015, in the matter of **Velamati Chandrasekhara Janardan Rao Vs. M/s. Sree Raja Rajeswari Paper Mills Limited And Another**, reported in **LAWS (APH) 2016 (7) 33.**

In the above said decision also, on the basis of a Resolution passed by the Board the name of the Company was struck off from the Register of Companies but later on a Shareholder of the Company who is the Chairman of the Board of Directors of the Company having got knowledge about certain assets of the Company at a later point of time moved the Company Court for restoration of the Company. The Hon'ble Andhra Pradesh High Court, after giving elaborate reasons, allowed the Petition for restoration of the Company and accordingly gave directions to the Registrar of Companies.

15. The meaning of word 'just' is discussed by the Hon'ble Delhi High Court in **Siddhant Garg** (Supra), in Para No. 18 as follows;

*"18. Further in the opinion of this Court, the expression 'just' would mean that it is fair and prudent from a commercial point of view to restore the company. The Court has to examine the concept of 'justness' not exclusively from the prospective of a creditor or a shareholder or a debtor, but from the prospective of the society as a whole. Once this Court is convinced that it is just to restore the company, then to refuse the relief because some third party may be inconvenienced by it, would be harsh."*

16. The Hon'ble Andhra Pradesh High Court in the Judgment delivered in the case of **Velamati Chandrasekhara Janardan Rao** (Supra), in Para No. 11 has held as follows;

*"11. In M.A. Panjwani v. Registrar of Companies and another, considered 4 scope of Section 560(6) and the meaning of words 'otherwise just' held as follows;*

*11. Under sub-section (6) of Section 560 of the Companies Act, 1956 the company court has the power to order restoration of the company's name to the registrar of companies on the application made by the company itself or its member or creditor. Such an application can be made at any time before the expiry of 20 years from the publication of the notice for striking off the name published in the official gazette. There are only two circumstances in which the company court can exercise the power. The first is when it is satisfied that the company was, at the time of striking off its name from the register, carrying on business or was in operation. The second circumstance is when it appears to the company court that it is "otherwise just" that the name of the company restored to the register. Obviously petitioner is not the company itself therefore, he has to be either a member creditor. It was submitted on behalf of ROC that*

*J. Khanna*

*B* Page 11 | 16

the petitioner is neither member nor a creditor of the company.

14. Quite apart from the above position, the sub-section recognises 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 *eiusdem 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 *eiusdem 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 or 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 *eiusdem generis* as seen from the judgments of the Supreme Court in *Lilawati Bai v. State of Bombay*: (AIR 1957 SC 521) and *Kavatlappara Kottarathil Kochuni v. State of Madras*: (AIR 1960 SC 1080).

15. In *Helen C. Rebella v. Maharashtra S.R.T.C.*: (1999) 1 SCC 90, it was observed by the Supreme Court that the word "just" denotes equitability, fairness and reasonableness having a large peripheral field. In understanding its scope, one must take into account all the facts and circumstances of the case and then decide what would be just and equitable. In *M.A. Rahim and another v. Sayari Bai*: (AIR 1973 Mad.83) it was held by a Division Bench of the Madras High Court that the word "just" connotes reasonableness and something conforming to rectitude and justice, something equitable and fair. In *Sidhant Garg and another v. Registrar of Companies and others*: (2012) 171 Comp.Cas.326 it was held by this Court (Manmohan, J.) that the word "just" would mean that it is

*Manmohan*

*fair and prudent from a commercial point of view to restore the company and that the Court has to examine the concept of "justness" not exclusively from the perspective of a creditor or a member or a debtor, but from the perspective of the society as a whole. The special facts of the present case attract this principle. The respondent has received monies from the petitioner. He was entrusted with the job of finding a house for the petitioner in Delhi. The averments in the petition prima facie indicate that the property "Jodhpur Gardens" was purchased not in the name of the petitioner but in the name of the company. The shares held by the petitioner in the company were also taken away from him without his knowledge or consent. The settlement entered into between Quli and Singhania by which the shares were transferred to Quli was held by this Court to be collusive. These are disputes which are pending in the trial court. The company is a defendant in the trial court. If its name is not restored, it would cause injustice to the petitioner and also cause prejudice to the trial as a whole. The message sent to the society as a whole, if the name of the company is not restored to the register, would be quite disturbing. The petitioner has to be protected in the litigation pending before the trial court. As observed by the Indore Bench of the Madhya Bharat High Court in Bhogi Lai Chimun Lai v. Registrar, Joint Stock Companies: AIR 1954 M.B. 70, the effect of the order of the Registrar of Companies striking off the name of the company from the register would be that the company will be deemed to be dissolved and it may be difficult for the petitioner to obtain any relief in the suit pending before the trial court. It is not also known whether the company had brought to the notice of the ROC about the pendency of the litigation in the trial court. If it had, perhaps the ROC would not have struck off the name from the register."*

17. In the case on hand, first of all the ROC did not follow the procedure laid down in Section 560 sub-section (1), (2) and (3) of the Companies Act, 1956.




17.1. Secondly, in view of the pendency of First Appeal No. 1635 of 2017 before the Hon'ble High Court of Judicature, Bombay at Aurangabad which is filed by the Company against the Judgment and Order dated 1.4.2017 passed by learned 2<sup>nd</sup> Joint Civil Judge (SD), Dhule in Special Civil Suit No. 34 of 2012 which is filed by the Company for specific performance of the contract against the original owner and the Intervening Applicant, it is otherwise just to restore the name of the Company in the Register of Companies maintained by the ROC.

18. The objections of the Intervening Applicant are not at all sustainable in view of the above discussion, and hence overruled.

19. The ROC in his Representation stated that the Company has not filed its Annual Returns and Balance Sheets and therefore the name of the Company has been struck off for non-filing of statutory returns. The ROC has stated that the Petitioner has not given specific reasons for restoring the name of the Company. However, the ROC has stated that he has no objection if this Tribunal passes an appropriate order for restoring the name of the Company as per provisions of Section 560 subject to the following;

- (a) Filing of overdue statutory returns;
- (b) Publication of notice in two leading newspapers circulating in the District and Official Gazette of Government of India in respect



of restoration of the name of the Company in the Register maintained by the ROC.

20. Considering all the aforesaid aspects, this Tribunal is of the view that it is just to restore the name of the Company in the Register of Companies maintained by the Registrar of Companies, Gujarat.

21. In view of the above, this Petition is allowed. The Registrar of Companies, Gujarat, Dadra & Nagar Haveli is directed to restore the name of the Company, M/s. Kamran Kapadia Land Developers Private Limited, to the Register of Companies upon the Petitioners complying with the following conditions;

(i) The Petitioners shall file all over due statutory returns with fee and additional fee as required under the Companies Act;

(ii) The Petitioners shall publish a Notice in leading newspapers circulating in the District as well as in the Official Gazette of the Government of India with regard to the restoration of the name of the Company in the Register of Companies maintained by the Office of the Registrar of Companies, as per the draft notice approved by the Registrar of Companies at the expenses of the Petitioners;



(iii) The Petitioners shall also pay an amount of Rs. 10,000/- to the Ministry of Corporate Affairs by way of Demand Draft drawn on Nationalised Bank towards the cost incurred by the Government in striking off the name of the Company within 3 (three) weeks from the date of this order.

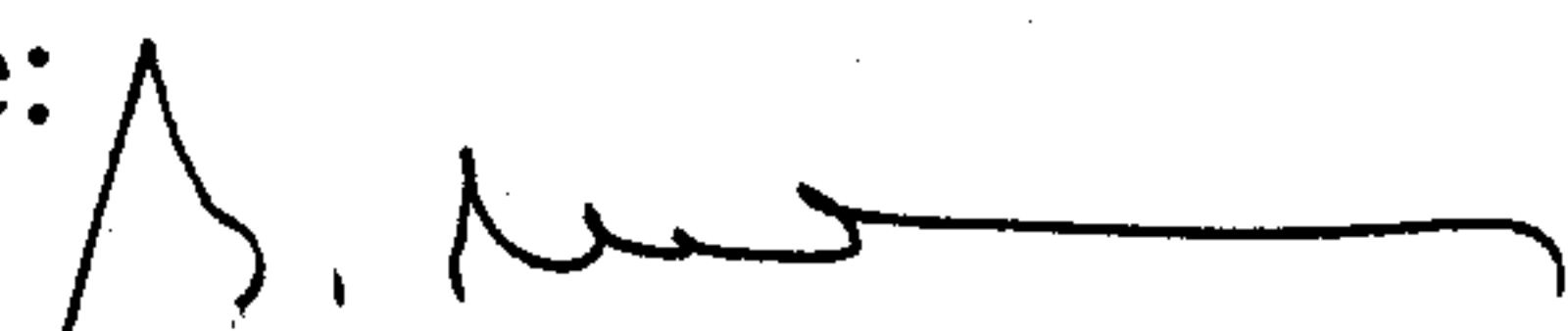
22. The Petition stands disposed of accordingly.

Signature:



**Ms. Manorama Kumari,  
Member (Judicial)**

Signature:



**Sri Bikki Raveendra Babu,  
Member (Judicial)**

Rmr..