

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH - III**

Appeal No.-418/ND/2018

**Coram: SHRI R.VARADHARAJAN, MEMBER (JUDICIAL)
DR. V. K. SUBBURAJ, MEMBER (TECHNICAL)**

IN THE MATTER OF SECTION 252 OF THE COMPANIES ACT, 2013.

IN THE MATTER OF:

IRIS CONSTRUCTIONS PVT. LTD. & ORS.

(Appellants)

VERSUS

THE REGISTRAR OF COMPANIES

(Respondent)



MEMO OF PARTIES:
IRIS CONSTRUCTIONS PVT LTD,
3/24, Ground Floor,
Kirti Nagar, Industrial Area,
New Delhi – 110015.

...Appellant No. 1/Appellant Company

HARPREET SINGH RENU,
S/o Shri Onkar Singh Renu,
R/o D-68, Mansarovar Garden,
New Delhi – 110015.

...Appellant No. 2

SHAN INDERJIT SINGH,
D/o Shri Inderjit Singh Kukreja,
R/o D-68, Mansarovar Garden,
New Delhi – 110015.

...Appellant No. 3

VERSUS

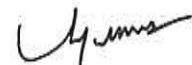
THE REGISTRAR OF COMPANIES,
4th Floor, IFCI Towers,
Nehru Place, New Delhi – 110019.

...Respondent

For the Appellant : Mr. M. K. Tiwari, Advocate

For the Respondent: Mr. Shobhit Srivastava, Deputy ROC

For the Intervener : Ms. Lakshmi Gurung, Standing Counsel for Income Tax



ORDER

Delivered on: 17 .09.2018

1. This is an appeal which has been preferred u/s 252 of the Companies Act, 2013 (“the Act”) by the Appellant Company in relation to an order of striking off the name of the Appellant Company passed by the Respondent with effect from 07.06.2017 under the provisions of Section 248 of the Companies Act, 2013. Ld. Counsel for the Appellant represents that the Appellant Company was incorporated under the provisions of Companies Act, 1956 and has its registered office at 3/24, Ground Floor, Kirti Nagar Industrial Area, New Delhi – 110015. It is further submitted by the Appellant Company that on 30.06.2017 in the notice published in the official gazette by the Registrar of Companies (“RoC”) the name of the Appellant Company was struck off and the Appellant Company was dissolved with effect from 07.06.2017. The Company was engaged in the business of builders, colonizers, developers, promoters, proprietors, contractors and maintainers of residential, commercial and industrial building, colonies, mills, factory buildings, workshops, cinema houses, real estate and deal in all kinds of immovable properties whether belonging to the company or otherwise and is carrying on the said business even as of today. According to the Ld. Counsel the Appellant Company admits its fault for non-filing of the financial statements and annual returns of the



Appellant Company and states that without any mala fide motive and due to oversight on part of the accounts employee the Appellant Company failed to file the annual returns and financial statements.

2. Upon notice to the Respondent RoC no adverse observations/objections have been raised by the RoC except for praying that the Appellant Company be directed to file all statutorily required documents since financial year ended on 31.03.2013 along with applicable and additional fee as payable.
3. Upon notice to the Income Tax Department the Department has filed its report observing that the Appellant Company has regularly filed its ITRs from A.Y. 2012-13 to 2016-17. A demand of Rs. 21,790/- under Section 143(1) of the Income Tax Act, 1961 for A.Y. 2012-13 is outstanding.
4. We have considered the plea of the Appellant Company on one hand and the Respondent on the other hand. The Appellant has questioned the process followed by the Respondent in striking off the name of the Appellant Company but the Appellant is seeking restoration of its name in the register as maintained by RoC relying on the ground that the Appellant as of date is carrying on the business for which it was incorporated and it is in operation



and in the circumstances, it is just that the name of the Company should be restored on the register of RoC as maintained by the Respondent. In order to sustain the said plea, the Appellant has placed the following evidences before us:

- i. Income Tax Returns for A.Y. 2015-16 and 2016-17 showing losses and no taxes for A.Y. 2017-18 showing payment of Rs. 67,50 as TDS.
- ii. Bank Statements of the Appellant Company pertaining to Axis Bank for 01.04.2016 to 22.02.2018 showing regular substantial transactions.
- iii. Balance sheet and profit and loss statement for 2015-16 showing nil revenue and for 2016-17 showing revenue of Rs.9,52,900/-.
- iv. Lease deed dated 01.05.2016 between the Appellant Company and one Dynamic Beneficial Accord Marketing Pvt. Ltd. for leasing out of premises by the Appellant Company to the Dynamic Beneficial Accord Marketing Pvt. Ltd.

5. As submitted by the Ld. Counsel for the Appellant, it is seen that the Appellant Company has been functioning during the period when the name of the Appellant Company was struck off. However, this will not absolve the

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Appellant from filing the necessary returns and documents and adhering to the provisions of Companies Act, 2013 and an onus is placed on the Appellant to strictly comply with the provisions of Companies Act, 2013. Thus, considering the discretion vested in this Tribunal under Section 252 of the Companies Act, 2013 to order the restoration of the name of the company where the struck off company is able to demonstrate that there is a running business as on the date when the name was struck off and further, considering that it is just to do so and in the interest of all the stakeholders including the Appellant Company itself and in the abovesaid circumstances the Appeal is allowed subject to the following directions namely:

The Appellant Company shall:

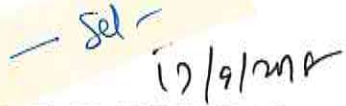
- (a) Within a period of 15 days from the restoration of the Appellant Company's name in the register being maintained by the RoC, the Appellant will file interalia its annual returns and balance sheets as well other compliances statutorily required to be made under the Companies Act, 2013 for the period from which there has been default with requisite charges/fees as well as additional fee/late charges.


- (b) That the Appellant Company out of its funds, set apart a sum of Rs.2,00,000/- and deposit the same with the Respondent/RoC to defray the cost and expenses as well as towards filing any additional fee in filing the returns and documents which has been failed to be filed leading to its name being struck off from the Register of Companies within a period of one month from the date of this order. In case of any amount payable in excess of the sum specified towards defraying the cost incurred by the Respondent/ROC and towards other amounts as are required to be paid by the Company statutorily the same shall be remitted by the Company.
- (c) Till all compliances are made by the Appellant Company, the Appellant Company shall not alienate or dispose of any of its valuable assets.
- (d) It is further observed that by virtue of this order of restoration of the name of Appellant Company in the register it will not entitle the directors of the Company whose names have been disqualified by virtue of provisions of Section 164 of the Companies Act, 2013 by the Respondent/RoC to be automatically restored to directorship except in accordance with law.



- (e) An affidavit of compliance of the aforesaid directions shall be filed by the Appellant Company within a period of 2 months from the date of this order.
- (f) Further this order allowing the appeal shall also not circumscribe the power of the Respondent to proceed against the Appellant 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.

The Appeal is disposed of accordingly.


(DR. V. K. SUBBURAJ)
MEMBER (TECHNICAL)


(R. VARADHARAJAN)
MEMBER (JUDICIAL)

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