

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH - III
Appeal No. 157/252/ND/2020

In the matter of:

**Mascot Buildwell Private Limited,
Registered Office at
M-2 First Floor, Main Road
Greater Kailash
New Delhi - 110048**

...Appellant Company

Versus

**REGISTRAR OF COMPANIES,
NCT of Delhi and Haryana,
4th Floor, IFCI Tower,
61, Nehru Place,
New Delhi- 110019...Respondent**

Order Delivered on:17.08.2021

CORAM:

SH. P.S.N. PRASAD, MEMBER (JUDICIAL)

SH. NARENDER KUMAR BHOLA, MEMBER (TECHNICAL)

Counsel for Appellant: Kartikay Yadav

Counsel for Respondent : Sweety Kumar (AROC)

Shlok Chandra along with Mansie Jain

ORDER

Per- P.S.N. PRASAD, MEMBER (JUDICIAL)

1. This is an appeal which has been preferred u/s 252 of the Companies Act, 2013 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 29.10.2019 under the provisions of Section 248 of the Companies Act, 2013. Learned counsel for the Appellant represents that the Appellant Company was incorporated on 21.05.2006 under the provisions of Companies Act, 1956 and has its registered office at M-2, First Floor, Main Road Greater Kailash, New Delhi-110048.

2. The Company is engaged in the business of builders and colonizers in respect of land lords or managers, contractors all kind of buildings whether residential, commercial, cinema houses, hotels, motels and estates in India and elsewhere.
3. Learned counsel for the Appellant represents that the Appellant Company has been active since incorporation and has also been maintaining all the requisite documentation, as per the provisions of the Companies Act, 1956/2013. However, compliance in relation to the provisions of Companies Act, 2013 with the Respondent RoC by filing annual returns has been omitted to be complied with but the said omission is not mala fide.



4. Upon notice to the Registrar of Companies ("RoC"), the RoC has filed its affidavit and reply. The Learned counsel for the RoC appeared and conveyed RoC's no objections to restoration of the Appellant Company subject to terms.
5. Notice was duly served to the Income Tax Department. The report is annexed with the said appeal dated 06.08.2021 stating that the concerned department is not having any objections if the company will be revived.
6. We have considered the plea of the Appellant and the representations of RoC. It is evident from the plea of the Appellant that it admits the default and questions the due process undertaken by the RoC in striking off the name of the Appellant Company as envisaged under Section 248 of the Companies Act, 2013.
7. However, 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 in active business and has been preparing all its financial statements and in the circumstances, it is just that the name of the Company should be restored on the register of RoC as maintained by



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the Respondent. In order to sustain the said plea, the Appellant has placed before us the following documents:

- i. True Copy of Financial Statements and Balance Sheet for the Years 2015 to 2019 with details of Reserves and Surplus amounting to Rs. 1,71,732 fixed tangible assets amounting to Rs 2,994as on 31.03.2019.
 - ii. Copies of financial statements for the financial year 2015-16, 2016-17, 2017-18 and 2018-19.
 - iii. Copy of the bank statement of ICICI bank (current bank account number 002905006333) has been attached with the Appeal.
 - iv. Copy of Income Tax Returns attached of the appellant company.
8. A perusal of the documents referred to in the paragraph above, reflects that the appellant has business operations which necessitate restoration of its name in the Register of Companies. The assumption of RoC that the company was not in operation was merely on grounds of non-filing of the Financial Returns by the appellant company. The Act itself provides for redressal of these defaults. A step as stringent as what has been taken at least requires an opportunity to



the appellant to take remedial measures. Merely to disallow restoration on grounds of its failure to file annual returns would neither be just nor equitable. As per several decisions of various Courts it should only be in exceptional circumstances that Courts should refuse restoration where the company has been struck off for its failure to file annual return as that would be excessive or inappropriate penalty for that oversight.

9. Accordingly, the appeal is allowed subject to payment of cost of Rs. 20,000/- to the Registrar of Companies. The restoration of the Appellant Company's name in the Register will be subject to their filing all outstanding documents for the defaulting years as required by law and completion of all formalities, including payment of any late fee or other charges which are leviable by the Respondent for the late filing of statutory returns. The name of the Appellant Company shall then stand restored in the Register of the RoC, as if the name of the company had not been struck off.

10. The direction for freezing the bank account(s) of the Appellant Company, if given on this ground, shall



consequently be also set aside immediately to enable the company to carry out its business operation. Compliance of this order for restoration shall be made by the Respondent with all its consequential effects within one week of compliance by the Appellant.

11. The application is disposed of accordingly. Let the copy of the order be served to the parties.

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(NARENDER KUMAR BHOLA)
Member (Technical)

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(P.S.N. PRASAD)
Member (Judicial)

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