

IN THE NATIONAL COMPANY LAW TRIBUNAL AT ALLAHABAD

COMPANY APPEAL NO.268/ALD/2020

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

IN THE MATTER OF:

SUNDARAM INFRAZONE PRIVATE LIMITED

(Registered Office at. Bargadwa, Moharipur, Gorakhpur, UttarPradesh, PIN- 273007)

Through its Director

Mr. Sheshanath

.....Appellant

VS

Registrar of Companies, Uttar Pradesh

.....Respondent

ORDER DELIVERED ON: 19.07.2021

CORAM: Justice (Retd) Rajesh Dayal Khare; Member(Judicial)

For the Appellant : Sh. Shahid Kazmi, Adv

For ROC : Sh. Shivendra Bahadur, Adv.

For IT Department : Sh.Krishna Agarwal, Sr. S.C for I.T Department

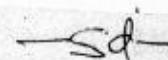
ORDER

Per se: Justice(Retd) Rajesh Dayal Khare; Member(Judicial)

1. The present appeal is filed by the Appellant U/s 252(3) of the Companies Act, 2013 read with Rule 87A of the National Company Law Tribunal Rules, 2016 for restoration of name of **Sundaram Infrazone Pvt. Ltd** struck off by the Registrar of Companies, Uttar Pradesh U/s 248 of the Companies Act, 2013 read with Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016, from the Register of Companies maintained by the Registrar of Companies, Uttar Pradesh.
2. Facts of the appeal are stated as under:



- i. The Appellant Company **Sundaram Infrazone Pvt. Ltd** was originally incorporated on 02.05.2012 with the Registrar of Companies, Uttar Pradesh having **CIN U070102UP2012PTC050248**.
 - ii. The Appellant Company is involved in Real estate activities with own or leased property which includes buying, selling, renting and operating of self-owned or leased real estate such as apartment building and dwellings, non-residential buildings, developing and subdividing real estate into lots etc. and also includes development and sale of land and cemetery lots, operating of apartment hotels and residential mobile home sites. The same is mentioned in the Memorandum of Association of the Company as Annexure-3 of the Application.
 - iii. Appellant submitted that the Registrar of Companies (Respondent herein), struck off the Appellant Company's name vide notification dated 1st to 7th September, 2018 due to default in statutory compliances w.r.t filing of Financial Statements and Annual Returns thus giving the status of a Dormant Company u/s 455(1) of Companies Act, 2013.
 - iv. It is stated by the appellant that there has been major change in the real estate policies, which has severely affected the real estate sector but as the new laws are promising thus a fresh restart is required.
 - v. It is further submitted that no show cause notice has been served from the respondent to the company nor to any of its directors before striking of and when directors visited the bank they came to know about struck off of the name of the company .
3. Upon notice being issued to the Respondent, ROC have filed their counter and stated that the name of the company was struck off after duly complying with



the provisions of 248 of Companies Act, 2013 Read with Rule 3 of the companies (Removal of names of Companies from Register of companies) rules 2016 after providing reasonable opportunity of being heard. No reply to the said Show Cause notice was received from the Company or its Directors. Further stated that neither any representation was received from company/ its directors nor was any objection received from any person and accordingly, the company was dissolved as the company failed to file its Annual return and Balance Sheets since 2014 and further stated that the Directors disqualification comes u/s 164 r/w 167 of the Act and by making application, the company can be restored but no specific remedy for removal of disqualification of directors can be made. Thus it is prayed that the DIN of the Directors should not be activated.

4. Further, the Income Tax Authorities in its representation mentioned that they have filed the ITR with the department for the financial year 2013-2014 to 2018-2019 and there is no outstanding demand outstanding nor any assessment is pending against the company. Further stated that on inquiry it is found that the company is not functional at the registered office as mentioned in the petition.

5. Further, in order to corroborate its submission, the Appellant has placed before us the Audited Balance Sheets for the Financial year 2015-2016 to 2018-2019 in which the last balance sheet for the year ending 31st March, 2019 reflects that the company has revenue from operation amounting to Rs.40,000/- and the company also has assets (fixed and current) amounting to Rs.1,23,17,711/- including inventories of Rs. 1,22,90,240 and cash and cash equivalent of Rs.27,471/- which shows that company is in operation and can restart its business with the assets available. As per the details, the Appellant Company is having substantial assets. Therefore, it cannot be said that the Appellant Company is not carrying on any business or operations.

—sd—

6. Further, it is averred by the Appellant Company, that, in the event of revival of the Company and restoration of the name of the Company in the Register maintained by the Registrar of Companies, the Appellant shall file all the outstanding statutory documents i.e. the Financial statements and Annual returns up to date.
7. Heard the rival sides and perused the record. It is not in controversy that the Appellant Company incorporated on 02.05.2012 with main object involved in Real estate activities with own or leased property which includes buying, selling, renting and operating of self-owned or leased real estate such as apartment building and dwellings, non-residential buildings, developing and subdividing real estate into lots etc. and also includes development and sale of land and cemetery lots, operating of apartment hotels and residential mobile home sites. and has not filed annual returns and balance sheets. The documents relied upon by the Appellant unmistakably demonstrate that the Appellant Company is a living entity.
8. As regards the dispute raised by the Income Tax Authorities in relation to the address mentioned by Appellant, it is to be observed that, since the reason of striking off the name of Company was non-fulfilment of statutory compliance, dispute regarding address cannot be taken as a ground to refuse the restoration of the Company Further for non- filing of statutory compliances, Income Tax Authorities can impose penalty for the same in accordance with the provisions of Companies Act.
9. This Tribunal has examined the relevant provision applicable for restoration of the name of the company as provided in Section 252 of the Companies Act 2013 and as per the facts and circumstances of the case, it will be in the interest of the Company, its Shareholders and Creditors, the name of the Company be ordered to

—sd—

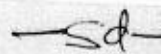
be restored by this Bench while exercising its jurisdiction U/s 252 of the Companies Act, 2013 read with Rules made thereunder.

10. The provisions pertaining to restoration of the name of the company has been provided in Section 252 of the Companies Act 2013 which includes that, if it is just and equitable to restore the name of the company in the Registrar of Companies, it may direct the ROC to restore the name in its Register.
11. The Appellant has been able to satisfy this bench that it has certain assets which necessitate and justify the restoration of its name in the Register of Companies. 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 an exceptional circumstance that court 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.
12. Accordingly, it is therefore the Registrar of Companies, the Respondent herein, is ordered to restore the original status of the Appellant Company as if the name of the Company has not been struck off from the Registrar of Companies and take all consequential actions such as change of Company's status from 'Strike Off' to 'Active' (for e-filing) etc.
13. The Appellant Company is directed to file all the statutory document(s) along with prescribed fees/additional fee/fine as decided by RoC within thirty days from the date on which its name is restored on the Register of Companies by the RoC.
14. The restoration of the Company's name is also subject to the payment of cost of Rs.50,000/- (Rupees Fifty Thousand Only) through online payment in www.mca.gov.in under miscellaneous fee by mentioning particulars as "payment

—sd—

of cost for revival of Company pursuant to orders of NCLT in CA No. 268/ALD/2020.

15. The Appellant is permitted to deliver a certified copy of this order with RoC within thirty days of the receipt of this order. On such delivery and after duly complying with above directions, the Registrar of Companies, Kanpur is directed to, on his office name and seal, publish the order in the Official Gazette.
16. The Appellant shall publish a notice in leading newspaper in the district, regarding restoration of company after taking approval of the draft notice from RoC. The RoC, Kanpur is directed to verify the draft notice and approve the same if it is in order.
17. The RoC is directed to publish 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 at the expenses of the Appellant.
18. The appeal is disposed off accordingly.



JUSTICE RAJESH DAYAL KHARE
MEMBER (J)

Date: 19.07.2021

Swati Gupta
(LRA)