

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH

Appeal No. 827/252/ND/2018

**IN THE MATTER OF SECTION 252(1) OF THE COMPANIES ACT,
2013 (18 of 2013)**

AND

IN THE MATTER OF:

INCOME TAX OFFICER

...APPELLANT

VERSUS

REGISTRAR OF COMPANIES

And another

...RESPONDENTS

Order Pronounced on: 09.10.2018

CORAM: DR. DEEPTI MUKESH

MEMBER (Judicial)

For the Appellant: Ms. Easha Kadian for Lakshmi Gurung Adv.
Standing Counsel for Income Tax

For the Respondent: Ms. Kusum Yadav, Company Prosecutor
For Registrar of Companies

MEMO OF PARTIES**Income Tax Officer****Registered Office at** ward-11 (2)

C.R. Building, I.P. Estate,

New Delhi – 110002

...Appellant**VERSUS****Registrar of Companies,**

Ministry of Corporate Affairs

4th Floor IFCI Tower,

61 Nehru Place,

New Delhi-110019

...Respondent No. 1**HKS Developers Private Limited****Registered office at** 272,

First Floor, Netram Market,

Naharpur, Sector 7, Rohini

New Delhi-110085

...Respondent No. 2**Satbeer Singh****Resident of** 253, Janakpuri, Bareilly,

Uttar Praddesh-243122

...Respondent No. 3**Ravinder Kaur****Resident of** 253, Janakpuri, Bareilly,

Uttar Praddesh-243122

...Respondent No. 4

Gurmit Singh

Resident of 428, Bhud, Bareilly

Uttar Pradesh-243005

...Respondent No. 5

ORDER

1. This appeal is filed by Income Tax Authority, through its Income Tax Officer, Mr. R.K. Bajaj, under Section 252(1) of the Companies Act, 2013 (for brevity 'the Act') against the order of striking off the name of the company passed by the respondent under section 248 (1) of the Act read with Rule 7 of Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 published on 30.06.2017 vide notification no. ROC-DEL/248(5)/STK-7/2879 by Registrar of Companies, the respondent herein.
2. The company is incorporated as a Private Limited Company under the provision of Companies Act, 1956 with the Registrar of Companies, NCT of Delhi and Haryana on 15.09.2004 having CIN U70101DL2004PTC129088.

3. The company is having registered office at 272, First Floor, Netram Market, Naharpur, Sector 7, Rohini, New Delhi-110085.
4. Authorized share capital of the Company is Rs.1,00,000/- divided into 10,000 equity shares of Rs.10/- each and issued, subscribed and paid up share capital of the Company is Rs.1,00,000/- divided into 10,000 equity shares of Rs.10/- each.
5. As per the notice of non-compliance of provisions of the Companies Act, 2013 in respect to filing of annual returns and financial statements since incorporation, the name of the company was struck off in terms of provision of Section 248(1) of the Companies Act, 2013 read with Rule 7 and Rule 9 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016.
6. The appellant has submitted that service was duly effected on the respondents. Other than the Registrar of companies, none appeared on behalf of the other respondents. While Respondent No. 2 to 5 were proceeded ex-parte, Respondent

No.1, Registrar of companies submits that they have no objections to the prayer of the applicant being granted by this bench.

7. The Appellant prays for the restoration of Respondent No. 1 company in order to take forward proceedings initiated against the company. As per averments, on the basis of the Non-Management System information received by the Income Tax department, the respondent company had sold and purchased immovable properties, total amounting to Rs. 5,33,17,000/- during the assessment year 2011-12, which has not been disclosed by the respondent company and further the respondent company has not filed its return of income for the assessment year 2011-12.
8. The appellant has further submitted that it appears that there is tax evasion which has escaped assessment within the meaning of Section 147 & 148 of the Income Tax Act and action in accordance with law is required to be initiated against the company. It is submitted that assessment of income of the Respondent Company for the Assessment

Year 2011-12 is pending and shall get barred by time on 31.12.2018. Notice dated 22.03.2018 under section 148 of the Income Tax Act, 1961 was issued to the respondent at its registered address and email id as well as through affixation, to which there is no response, from any of the Respondent No. 2 to 5 being the company and its ex-directors.

9. The Ld. Counsel for the Income Tax submits that in order to recover the taxes on the undisclosed income of the respondent company and to charge and recover the revenue from the transactions from the respondent company during the year 2011-12 of immovable property, it necessitates restoration of the Respondent No. 2 Company in the Register of Companies to proceed further in accordance with law, since as on date the proceedings cannot continue against the company, for it being struck off.

5. The income tax department is an aggrieved party within the meaning of section 252(1) as it has to recover taxes payables by respondent company and great prejudice will be caused

to revenue if the name of the respondent company is not restored back. In above circumstances, this appeal is allowed. The Registrar of companies is therefore directed to restore the name of the Respondent Company in their Register and also proceed to take such other and further penal action against the respondents in accordance with the statutory provisions. The name of the Appellant Company shall then, as a consequence, stand restored to the Register of the Registrar of Companies, as if the name of the company had not been struck off in accordance with Section 248(1) of the Companies Act, 2013.

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

Sd/-

DR. DEEPTI MUKESH
MEMBER (JUDICIAL)