

**NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
AHMEDABAD**

**Co. Appeal No. 320/252(3)/NCLT/AHM/2018**

Coram: **Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, 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 31.08.2018**

Name of the Company: Arpit Dubey (Showworld Events Pvt. Ltd.)  
V/s.  
Registrar of Companies, MP.

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

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
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**ORDER**

None present for the appellant as well as for ROC. <sup>the</sup> ✓  
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The Order is pronounced in the open court, vide separate sheet.

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**MANORAMA KUMARI**  
**MEMBER JUDICIAL**

Dated this the 31<sup>st</sup> day of August, 2018

*Harihar Prakash Chaturvedi*

**HARIHAR PRAKASH CHATURVEDI**  
**MEMBER JUDICIAL**

**BEFORE NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH**

**Co. Appeal No. 320/252(3)/NCLT/AHM/2018**

**In the matter of:**

M/s.Showworld Events Private Limited

**In the matter between:**

Mr. Arpit Dubey  
S/o Mr. Subhash Chandra Dubey  
203-B, Nyay Nagar  
Indore-452 001  
Madhya Pradesh

..... Appellant

**Versus**

Registrar of Companies  
3<sup>rd</sup> Floor, 'A' Block  
Sanjay Complex  
Jayendra Ganj  
Gwalior-474 009  
Madhya Pradesh

.....Respondent

**Order delivered on 31<sup>st</sup> August, 2018.**

**Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (J)  
Hon'ble Ms. Manorama Kumari, Member (J)**

**Appearance:**

Mr. Jay Surti, PCS, for the Appellant.  
None for the ROC.

**ORDER**

**[Per: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (J)]**

1. By this Appeal, the appellant being Shareholder/Director of the Company, viz., M/s. Showworld Events Private Limited, has sought for restoration of Company's name which stood struck off from the Register of Companies by the office of the Registrar of Companies, Gwalior, Madhya Pradesh ["ROC" for short]. The





relief as being prayed for in the present appeal are stated as under: -

- (i) to grant an order restoring the name of the Company, to the register of ROC.**
- (ii) to remove disqualifications of directors in pursuance to the provisions Section 164(2) of the Companies Act, 2013, as may deem fit, upon completion of filing of pending Annual Returns and Financial Statements from the financial year 2009-2010.**
- (iii) to exempt from the cost to Ministry of Corporate Affairs, towards the cost incurred by the Government in striking of the name of the company.**

2. The facts in brief, which are necessary for disposal of the present Appeal, are stated as under;
3. The appellant states that the ROC vide its Public Notice No. ROC-G/248(5)/2017/2949 dated 14.06.2017 (issued in Form No. STK-7) followed by final notice (issued under sub-section(5) of Section 248 of the Companies Act, 2013), has struck off the name of the Company from the Register of Companies with effect from 14.06.2017 inter alia on such ground that the Company failed to file Annual Returns and Balance Sheet for the financial year 2009-10 to 2016-17. Hence, the Registrar of Companies, Gwalior, Madhya Pradesh, initiated a statutory action against the Company under Section 248(1) of the Companies Act, 1956.
4. It is reported that the company was incorporated on 22<sup>nd</sup> October, 2007 and is having its registered office at 307, Ratn Mani Complex, Old Palasiya, Indore-452 001, Madhya Pradesh.

*Adhinar*

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5. The appellant has further contended that the company was incorporated with following main objects:
- 1) to carry on business of providing services Event Managements, Fashion Shows, concert shows, talk show, reality show, quiz contest, debate, celebrity management, product launch, promotions of product, management and conduction of seminars and conference, organizing theme parties and décor, wedding management, sponsors management, fashion shows, road shows, garba and other cultural and social activities including sports activities and management and conduction of other programmes and shows which are of similar type and nature.
6. The appellant has filed an additional affidavit by deposing that it is not a shell company nor any unusual transaction took place during the period of demonetization.
7. The appellant in the present appeal has submitted that the company could not file its Financial Statements and Annual Return for the Financial Year 2009-10, 2011-12, 2012-13, 2013-14, 2014-15, 2015-16 and 2016-17, in pursuance to the provisions of Section-220 & 159 of the Companies Act, 1956 & Section-137 & 92 of the Companies Act, 2013, in the Office of the ROC. It is further contended that due to lack of knowledge and inadvertence the appellant could not comply with such statutory compliances. It is further admitted that the company at present is not a going concern, but the company intends to file all its pending returns and the documents before the MCA and thereafter proposed to be closed.
8. In response to the notice issued in respect of the present appeal, the ROC, MP, has filed its Representation dated 8<sup>th</sup> August, 2018, has denied all allegations made in and contentions of the



Appellant in the present appeal. The ROC has stated the reason for striking off the name of the company is that the company failed to file its Statutory Returns i.e. Annual Returns, Balance Sheets & P/L Account for the Financial Years 2009-10 to 2016-17. Due to such reason, the name of the Company was struck off. The ROC has also contended that the present Appeal to be considered on its merits and name of the Company may be restored by this court subject an assurance from the appellant for making all statutory compliance on behalf of the Company and further payment of cost to the Central Government.

9. The Income Tax Department did not file its reply/comments in respect of the present appeal, despite proper service of notice to it.
10. The appellant, Mr. Arpit Dubey, being a Shareholder/Director of the company has preferred the present appeal under Section 252(3) of the Companies Act, hence, he is entitled for the same seeking for restoration of Company's name. Hence, the present Appeal is found maintainable. Since the name of the Company, M/s. Showworld Events Private Limited., was struck off on 14.06.2017 from the Register of Companies, Gwailor, Madhya Pradesh, and further got published in the Gazette of India, while the present Appeal was filed on 25<sup>th</sup> June, 2018. Hence, it is found to be filed well within limitation.
11. As per the material available on record, the main reason for striking off the name of the Company, M/s. Showworld Events Private Limited, is that the Company has failed to file its Annual



Returns, Balance Sheets & P/L Account for the Financial Year 2009-10 to 2016-17 with the Registrar of Companies, MP, Gwalior.

12. Further the material available on record goes to show that the Company was not a going concern. Moreover, the appellant himself has proposed to close down the company after filing of the requisite documents/statutory returns before the MCA. Since name of the company already got struck off before filing of such Application for closure of the company, this could not be done. Hence, the present Appeal before this Tribunal for activation of DINs of its Directors of the struck off company.
13. The Registered Office of the Company is situated at 307, Ratn Mani Complex, Old Palasiya, Indore, Madhya Pradesh-452 001.
14. In the light of above narrated facts of the appeal, we duly considered the issue relating to restoration of the name of the defunct Company to the Registrar of Companies and the circumstances in which a Company Court can exercise its power, we feel appropriate to place reliance on a decision of the Hon'ble High Court of Andhra Pradesh, in the case of **Velamati Chandrasekhara Janardan Rao** (*Supra*), the relevant extract thereof is being reproduced here in below:

*"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*

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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 be restored to the register. Obviously petitioner is not the company itself therefore, he has to be either a member or creditor. It was submitted on behalf of ROC that 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 ejusdem 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 ejusdem 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 ejusdem 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

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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 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."

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15. By following the above stated judicious precedents and by considering the facts and circumstances of the present case, we are of the considered view that it is just and equitable to restore the name of the Company, M/s. Showworld Events Private Limited., in the Register of Companies maintained by the ROC, Gwalior, Madhya Pradesh, so as to enable the company to remove the defects of disqualification, if any, of its Directors, which is imposed under Section-164(2) of the Companies Act, 2013 and further to allow them to file all statutory returns before their decision for closing down the company.
16. Therefore, the present Appeal is conditionally allowed. The Registrar of Companies, Gwalior, Madhya Pradesh, is hereby directed to restore the name of the Company in the Register of Companies subject to complying with following conditions by the appellant;
- (i) The Appellant shall file all its overdue statutory returns with fee and additional fee as required under the Companies Act; and other laws within stipulated period stated therein, or within 90 days from the receipt of an authentic copy of this order and after restoration of the name of the company in the Registrar of Companies, Gwalior, Madhya Pradesh.
  - (ii) The Appellant shall publish a Notice in leading newspapers having wide circulation in the District as well as in the Official Gazette of the Government of India with regard to restoration of the name of the Company in the

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Register of Companies as 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 Appellant;

(iii) The Appellant shall also pay an amount of cost of Rs.25,000/- to the Central Government, Ministry of Corporate Affairs, through the Office of ROC, 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 receipt of an authentic copy this order and shall file compliance.

17. The Appellant as well as the Registry is directed to communicate a copy of this order to the concerned Income Tax Department and the Registrar of Companies, MP, Gwalior, for information and necessary action.

18. With the aforesaid observation, the present appeal is conditionally allowed and stands disposed of.

  
**Manorama Kumari**  
Member (Judicial)

  
**Harihar Prakash Chaturvedi**  
Member (Judicial)