

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI COURT (COURT NO. IV)**

Appeal No.482A/ND/2018

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

AND

M/S. ARUN KUMAR SONI

...APPELLANT

VERSUS

**REGISTRAR OF COMPANIES
And another**

...RESPONDENT

**CORAM: DR. DEEPTI MUKESH,
HON'BLE MEMBER (J)**

Order pronounced on: 17.09.2018

For the Appellant

Mr. Sahil Mongia and Rahul Yadav, Adv.

For Respondent

Ms. Kusum Yadav, Coy. Prosecutor.

Stdng. Counsel for ITD

Mr. Deepak Anand, Jr. Stng. Counsel with
Mr. Aayushmaan Vatsayana.

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MEMO OF PARTIES.**Arun Kumar Soni**

R/o. 59/20, Prabhat Road,
Karol Bagh,
New Delhi-110005.

...Appellant**VERSUS****The Registrar of Companies**

NCT of Delhi and Haryana,
4th Floor, IFCI Tower,
61, Nehru Place, New Delhi-110019.

...Respondent**Income tax Officer,**

Ward-5(4),
Room No. 229-B, CR Building,
IP Estate, New Delhi-110002.

ORDER

1. The appellant Mr. Arun Kumar Soni, Director of the company M/s C.R. Real Estates Pvt. Ltd. has filed this appeal under section 252 of the Companies Act, 2013 (hereinafter called as 'the Act') against the order of the Registrar of Companies (ROC), NCT of Delhi and Haryana dated 27.04.2017. The order mentioning the name of the Company at Serial No. 27291 with CIN No. U70101DL2005PTC137689 was duly published in Official Gazette on 30.06.2017. The name of the company has been struck off from the Register of Companies maintained by



the respondent ROC, under section 248(5) of the Act read with Rule 7 and Rule 9 of Companies (Removal of Name of the Companies from the Register of the Companies) Rules, 2016.

2. It is stated that the company is incorporated as a Private Limited Company with the Registrar of Companies, NCT of Delhi and Haryana on 16th June, 2005, under the Companies Act, 1956 having CIN U70101DL2005PTC137689.
3. The registered office of the company M/s C.R. Real Estates Pvt. Ltd is situated at 11799/6, SAT Nagar, Karol Bagh, New Delhi-110005.
4. The authorized capital of the company is Rs.10,00,000/- and paid up capital of the company is Rs.1,05,000/-.
5. The main objects of the company at the time of incorporation was to carry on business of sale, purchase, mortgage, acquire and/or dispose of lands, buildings, etc. and hence, predominantly in the business of Real Estate.



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 the company was in operation and the business activities were carried out by the company during the period of striking off but the reporting of such activities through Annual Returns and Financial Statement had not been filed with Registrar of Companies due to inadvertence on part of the management.
7. The appellants have stated that no notice under section 248(1) of the Act in the form of STK-1 was received by the Company or any of the directors or any person on their behalf and hence not afforded any opportunity of being heard before striking of the name of the company.
8. However, without going into the controversy of the latches in following the due procedure of law by Registrar of Companies



before the final act of striking off the name of the company from the register of companies maintained by Registrar of Companies, for non-filing of statutory documents by company for the relevant period, through publication of notice on 30.06.2017, the appellants have preferred to prove with documents and records that the company was in operation and doing business during the period of striking off the name of the company as a better remedy.

9. The Appellant has brought forward the following facts justifying for revival through the company could not be operative due to reasons beyond its control and struggle of the company to bring back the capital to run the company and start its operations.
- i. The copies of financial statements of the company for the financial years 31.03.2014 and 31.03.2015 and the unaudited balance sheets of the company for the financial year 2015-2016 and 2016-2017.
 - ii. The copy of income tax return for the financial year from 2015-2016 to 2016-2017 as NIL returns.

- iii. The copy of an ex-parte award of Hon'ble High court Arbitration Centre, New Delhi, dated 28.09.2012 under section 11 of the Arbitration and Conciliation Act, 1996, awarding an arbitral award of Rs. 9,80,00,000/- (comprising of Rs. Five crores towards refund of the deposit and Rs. 4,80,00,000/- as interest @18% per annum) in favour of the appellant company, which is annexed with appeal.
- iv. The copy of the execution proceedings pending before the Hon'ble High Court of Delhi, being EX P No. OMP(ENF) (COMM.) No. 28/2016, seeking execution of the award dated 28.09.2012 and is pending.
10. It is further submitted by the Appellants that the failure to file financial statements and annual returns with the Registrar of Companies, NCT of Delhi and Haryana was due to inadvertence on part of the management and due to lack of professional guidance and as such there was no wilful or mala-fide motive behind non-filing of the Financial Statements and Annual returns.
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11. The Registrar of Companies has stated that it has no objection if the name of the Company is restored on proving by the Company that it was carrying on business or was in operation and the Company be also directed to file financial statements up to date with appropriate filing and additional fees.
12. The Income Tax Department has submitted in its report that there is no outstanding demand against the Assessee and has no objection if the company is considered for revival.
13. The Section 252(3) contemplates that one of the three conditions are required to be satisfied before exercising jurisdiction to restore company to its original name on the register of the Registrar of Companies namely:
 - a. That the company at the time of its name was struck off was carrying on business.
 - b. Or it was in operation
 - c. Or it is otherwise just that the name of the company be restored on the register.
14. The grounds contemplated under section 252 of Companies Act, 2013, namely, that of the company carrying on business



or was in operation at the time of striking off its name, and where it appears “just” to the adjudicating authority that the name of the company is to be restored to the Register of Companies. It is also seen from the perusal of the provisions under Section 252(3), that if Tribunal is of the opinion it is “just” that the name of the company is to be restored to the register of companies maintained by Registrar of Companies, such orders can be passed for the name of the company to be so restored. For reference, the provisions of Section 252(3) of the Companies Act, 2013 is extracted hereunder:

252(3) “ *If a company, or any member or creditor or workman thereof feels aggrieved by the company having its name struck off from the register of companies, the Tribunal on an application made by the company, member, creditor or workman before the expiry of twenty years from the publication in the Official Gazette of the notice under subsection (5) of section 248 may, if satisfied that the company was, at the time of its name being struck off, carrying on business or in operation or otherwise it is just that the name of the company be restored to the register of companies,*



order the name of the company to be restored to the register of companies, and the Tribunal may, by the order, give such other directions and make such provisions as deemed just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off from the register of companies.

15. The Appellant have submitted sufficient evidence to bring the justification for revival of the company under section 252 (3)(c). The company had entered into a collaboration agreement, dated 14.02.2007 with Mr. Dharampal Malik and also paid sum of Rs. 5 crores as advance-cum-security deposit to the owner of the land, which is reflected in the balance sheet of the financial year 2014 and 2015 as short-term loans and advances. The company after enquiring came to know that the person claiming ownership was actually not the owner of the piece of land and subsequently served a notice terminating the said agreement and seeking refund of Rs. 5 crores paid to him. On non-repayment of the aforesaid amount, the company filed a FIR dated 09.10.2007 against the owner. Thus it is seen that due to pending aforesaid litigations, the survival and functioning of the



company was jeopardized. It is established from various judgements that pending litigations can be considered as valid and just reason to revive the company as cited in order of the Honourable High Court of Delhi in Company Petition 406/2009 dated 04.06.2010; Honourable High Court of Guwahati in Company Petition 24/2012 dated 05.06.2017; order of Honourable High Court of Delhi in Company Petition No. 200 of 2011 dated 08.02.2012, and order of Honourable High Court of Delhi in Company Petition No. 185/2008 dated 21.04.2010, which held as under:

“when a litigation is pending by or against a company, it is only proper that its name be restored to the Register to enable the matter to be carried to its logical conclusion”

Hence, there exists a “just” ground for the restoration of the name of the appellant company in the Register of Registrar of Companies.

16. Accordingly, this appeal is allowed. The Public Notice of Registrar of Companies striking the name of the company is set aside. The restoration of the company’s name to the Register of Registrar of Companies is ordered subject to its



filing of all outstanding documents with proper filing fees along with additional fees required under law and completion of all formalities, including payment of any late fee or any other charges which are leviable by the respondent for the late filing of statutory returns, and also subject to payment of cost of Rs. 25,000/- to be paid to Prime Minister's Relief Fund. 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.

17. The appeal is disposed of accordingly.

18. Let the copy of the order be served to the parties.

— SID —

(DR. DEEPTI MUKESH)

MEMBER (JUDICIAL)

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