

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

Appeal No.156/252/PB/2018)

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

In the matter of:

AURIC BUILDERS PVT. LTD.

...APPELLANT

Versus

REGISTRAR OF COMPANIES

...RESPONDENT

CORAM

**DR. DEEPTI MUKESH,
HON'BLE MEMBER (JUDICIAL)**

Order pronounced on: 25.09.2018

**For the Appellant
For the Respondent**

Vinay Kumar Jha, CS.
Ms. Kusum Yadava,
Coy. Prosecutor.
Ms. Lakshmi Gurung, Adv. with
Ms. Easha Kadian, Adv. for income
tax

MEMO OF PARTIES.

Auric Builders Pvt. Ltd.
Regd. Office T-334/8,
Street No. 8, Gautampuri,
New Delhi-110053.

...Appellant

VERSUS

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

...Respondent No.1

Income tax Officer,
Ward-3(3),
Room No. 392, CR Building,
IP Estate, New Delhi-110002.

...Respondent No.2

ORDER

1. The appellant company M/s Auric Builders Pvt. Ltd. (for brevity "the company") has filed this appeal under section 252 of the Companies Act, 2013 (hereinafter called as 'the Act') through its Director Ms. Rajani Sharma against the order of the Registrar of Companies (ROC), NCT of Delhi and Haryana dated 30.06.2017. The order mentioning the name of the Company with CIN U70200DL2010PTC198509 was duly published in Official Gazette on 08.07.2017. The name of the company has

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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 30th January, 2010, under the Companies Act, 1956 having CIN U70200DL2010PTC198509.
3. The registered office of the company is situated at T-334/8, Street No. 8, Gautampuri, Delhi-110053.
4. The authorized capital of the petitioner company is Rs.4,00,000/- divided into 40,000/- equity shares of Rs.10/- each and paid up share capital of the company is Rs.3,00,000/- divided into 30,000 equity shares of Rs.10/- each.
5. The main objects of the appellant company are:
 - i. To undertake, carry on and operate whether nationally and internationally the business of purchase, acquire and hold with absolute or limited rights or on lease or otherwise and to erect, construct, repair, maintain, develop and operate including but not limited to land, building, houses, offices,

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factories, mills, go downs, sheds and all other types of residential and commercial land, building etc. and to sell, buy, exchange, barter, let or otherwise deal in land, building and all other types properties to provide service of real estate agents to all clients, -Obusiness of sale, purchase, mortgage, acquire and/or dispose of lands, buildings, etc. and hence, predominantly in the business of Real Estate.

And other main objects.

6. 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.
7. 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

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not been filed with Registrar of Companies due to inadvertence on part of the management.

9. The Appellant has brought forward the following facts about it being in operation and functional during the period of striking off:

- i. The copy of Bank Statement of company issued by Kotak Mahindra Bank, from 31.03.2015 to 13.02.2018, having closing balance of Rs. 10,89,336/-, IDBI Bank from 01.03.2015 to 31.03.2016, having closing balance of Rs. 3,32,401/-, reflecting various transactions done by the company during the period of striking off.
- ii. The copies of financial statements of the company for the financial years from 31.03.2015 to 31.03.2017. The Balance Sheet as on 31.03.2017 reflects fixed assets of Rs. 3,77,347/- and Loss of Rs. 50,196/-
- iii. The company has incurred employee benefit expense of Rs. 5,26,452/- for the financial year ending on 31.03.2017.



- iv. The copies of Income Tax Returns filed for the assessment years 2011-12 to 2016-17. The tax paid for assessment year 2016-17 is Rs. 3,37,032/-
- v. The copy of Form 26AS for the financial year from 2015-16 to 2017-18, projecting the total tax deducted of Rs. 72,729/- as on 31.03.2017.
- vi. The copies of challan returns for Employees Provident Fund and Employees State Insurance Corporation for the assessment year from 2016 to 2017.
- vii. The copy of CST and DVAT registration certificate having TIN No.07590390912, issued on 03.06.2018 and 29.05.2017 respectively.
- viii. The copy of GST registration certificate having GSTIN 07AAICA3559KIZD issued on 26.06.2017.
- ix. The copy of service contract for work order, between the appellant company as vendor and the different parties as vendee's, executed in the financial year from 2014 to 2016.



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.
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.

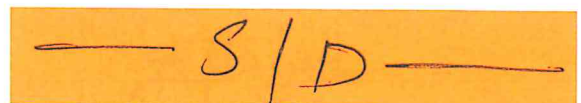
14. The Appellant have submitted sufficient evidence that it has been in operation since incorporation and therefore could not be termed as defunct company. Thus, taking into consideration the provisions of Section 252(3) of the Companies Act, 2013 which vests this Tribunal with a discretion where the Company whose name has been struck off and such Company is able to demonstrate that there is a running business as on the date when the name was struck off and also keeping in consideration that it is just to do so can restore the name of the Company in the Register and in the interest of all stakeholders including the Appellant itself who seeks restoration of the name of the Company in the register maintained by Registrar of Companies, the company deserved to be restored.

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15. 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.

16. The appeal is disposed of accordingly.

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



(DR. DEEPTI MUKESH)
MEMBER (JUDICIAL)