

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
KOLKATA**

**C.P. Appeal No.296/KB/2018**

**Coram: Mr. Madan B. Gosavi, Member (Judicial)**

**In the matter of**

**An application under Section 252 (3) of the Companies Act, 2013 for restoration.**

And

**In the matter of:**

**ISHAN HOMES PRIVATE LIMITED** (Company Name Struck Off by Registrar of Companies, Bihar) having its registered office at 203 Saket Vihar, Block-D, Khajpura, Patna 800 014 in the state of Bihar within the aforesaid jurisdiction;

And

**In the matter of:**

**NAGMANI** residing at Bari Pahari, Sohsarai, P.O. Sohsarai, P.S. Laheri, Nalanda-803118, Bihar, within the aforesaid jurisdiction.

... Appellant

And

**In the matter of:**

**REGISTRAR OF COMPANIES, BIHAR**, having its office at 201 Dakachineshwar Apartment Nandanpuri, Khajpura, Baily Road, Patna 800 014 in the State of Bihar within the aforesaid jurisdiction;

.... Respondent

**Counsel on Record:**

Mr. Sashi Agarwal, C.A. ] - For the Appellant.  
Mr. Tapas Kumar Das, Advocate ]  
Ms. Parna Das, Advocate ]  
Ms. Archana Sinha, Sr. Standing Counsel,  
Income Tax Department.

**Date of Pronouncement of Order: 27th September 2018.**

Sd

## ORDER

1. This is an appeal filed Under Section 252(3) of the Companies Act, 2013, filed by one Mr. Nagmani, a shareholder of the appellant Company by name Ishan Homes Private Limited having its registered office at 203 Saket Vihar, Block-D, Khajpura, Patna 800 014 in the state of Bihar which has been struck off by the Registrar of Companies Bihar for non-filing of annual returns and balance sheets since 2012, seeking restoration of the name of the Company, namely, Ishan Homes Private Limited on the register of functional Companies maintained by the Registrar of Companies, Bihar.

2. It is stated that the Company was incorporated on 15<sup>th</sup> January 2009. It was a going concern. However, the Registrar of Companies (ROC) Bihar issued notice dated 20.03.2017 under Section 248 (5) of the Companies Act, 2013 stating as to why the name of the Company should be struck off from the register because the Company did not file Annual Returns and Balance Sheets with the Office of the ROC, Bihar since 2012. The Company's name was struck off from the register of ROC Bihar w.e.f. 14.07.2017.

3. The appellant stated that the Company is a going concern and carried on its business. The authorized share capital of the Company is Rs.5,00,000/- (Rupees Five Lakhs only) divided into 5,000 equity shares of Rs.10/- each and issued, subscribed and paid-up share capital of the Company is Rs.1,00,000/- (Rupees One Lakh only). The Company is engaged in the business of fabrication and construction. It has been paying all taxes.

4. The fact in brief that the Company carries on its business and is a going concern and it produced records of Annual Accounts, Balance Sheets and Income Tax returns for the period in between 2012 to 2017.



Heard the Ld. Advocates for the appellants and perused the records.

5. Section 252 (3) allows this Tribunal to order the restoration of the name of the Company which has been struck off by ROC, provided the appeal is filed with this Tribunal within 20 years from the date of order of the ROC. It further makes clear that such appeal has to be filed by the Company or any of its members, creditors or workmen and it has to be shown that the Company was doing its business or carrying operation, or it is just to get the name of the Company restored in the Register of the Registrar of Companies.

6. Putting before us the above provisions of the law we have scrutinized the appeal proposal. It is seen from the records that the statement of account and balance sheets of the Company are filed on record for the period between 2012 to 2017 at Pages 52 to 65 of the application. Independent Auditor's Report is also produced along with rejoinder dated 14.8.2018. Auditor has also certified that the Company was a going concern. The appellant has also produced on record the Statement of Bank Account maintained by the struck off Company. The perusal of the same shows that the Company's account is regularly operated during the above period. On perusal of the all above documents, it clearly shows that the Company was carrying on its business when its name was struck off from the register of functional Companies.

7. It is stated by the appellant that the financial statement and annual returns were not filed with ROC Bihar by the Company because of lack of knowledge regarding compliances under the Company's Act, 2013. I accept such reason to be genuine. From the records produced before me, I find that when its name was struck off, the Company was doing business. During the year ending 31.3.2012 the struck off Company made a profit of Rs.36,968/-,

A pink sticky note is placed at the bottom right of the page. It contains a blue checkmark and a signature in blue ink.

during the year ending 31.3.13, it made a profit of Rs.713/-, during the year ending 31.3.14 it made a profit of Rs.4,456/-, during the year ending 31.3.15 it made a profit of Rs.10,750/-, during the year ended 31.3.16 it made a loss of Rs.1,398/- and during the financial year ending it made a net loss of Rs.1,448/-

8. Notice was also issued to ROC Bihar asking him to give his say in the matter. In Para 8 of its Report dated 31.05.2018, ROC Bihar stated that the respondent would have no objection with the name of the appellant Company restored in the ROC Bihar provided the appellant Company fulfils the legal requirements such as filing its due annual returns along with Balance Sheets as well as Profit and Loss Accounts.

9. I feel that since the Company made default for more than five years by non-filing returns with ROC and now approaching us lately, some costs have to be imposed for such negligence. Hence, we direct the appellant to pay cost of Rs.1,00,000/- (Rupees One Lakh only).

10. In view of above, say of the ROC Bihar on record and on scrutiny of the documents produced for our perusal, I am satisfied that the appeal is required to be allowed. I record my finding that the Company was doing business when the name of the Company was struck off. Resultantly, I allow the Company to get its name restored and pass the following order:

## ORDER

- (1) 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 register of companies with resultant and consequential actions like changing

status of Company from 'strike off to Active; to activate DIN Nos of the appellant etc.

- (2) The Appellant company is directed to file all pending statutory document(s) including Annual Accounts and Annual returns for the financial years 2011-2012 to 2017-2018 along with prescribed fees/ additional fee/fine as decided by ROC within 45 days from the date on which its name is restored on the register of companies by the ROC;
- (3) The Company's representative, who has filed the Company appeal on behalf of the Appellant Company, is directed to personally ensure compliance of this order.
- (4) The restoration of the Company's name is also subject to the payment of cost of Rs.1,00,000/- (Rupees One Lakh only) through online payment in [www.mca.gov.in](http://www.mca.gov.in) under miscellaneous fee by mentioning particulars as "payment of cost for revival of company pursuant to orders of Hon'ble NCLT in C.P. (Appeal) No.296/KB/2018".
- (5) The applicant is permitted to deliver a certified copy of this order with ROC Bihar within thirty days of the receipt of this order.
- (6) On such delivery and after duly complying with above directions, the Registrar of Companies, Bihar is directed to, on his office name and seal, publish the order in the official Gazette;
- (7) This order is confined to the violations, which ultimately leads to the impugned action of striking of the Company, and it will not



come in the way of ROC to take appropriate action(s) in accordance with law, for any other violations /offenses, if any, committed by the appellant company prior or during the striking off of the company.

The Appeal No.296/KB/2018 is disposed of accordingly.

Urgent certified copy of this order, if applied for be issued upon compliance with all requisite formalities.

A pink sticky note with handwritten text in blue ink. The text includes a signature that appears to be 'MBG' and the date '27/9/2018'.

**(Madan B. Gosavi)**  
**Member (J)**

*Signed this day of 27th September 2018.*

**PS\_Aloke**