

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH - III

Appeal No.-388/252/ND/2018 ✓

CORAM: SHRI R.VARADHARAJAN, MEMBER (JUDICIAL)

DR. V.K.SUBBURAJ, MEMBER (TECHNICAL)

IN THE MATTER OF SECTION 252 OF THE COMPANIES ACT, 2013.

IN THE MATTER OF:

CROSS ROAD INFOSYSTEM PRIVATE LIMITED

(Company)

VERSUS

THE REGISTRAR OF COMPANIES

(Respondent)

MEMO OF PARTIES:

Appeal No.388/252/ND/2018
Cross Road Infosystem Private Limited

 1

AJAY CHADHA,
Director,
R/o Flat No. 6,
1st Floor, A- 41,
Friends Towers, Plot No. 47,
Sector – 9, Rohini, Delhi – 110085,
India.

...Appellant No. 1

KIRAN CHADHA,
Director,
R/o Flat No. 6,
1st Floor, A- 41,
Friends Towers, Plot No. 47,
Sector – 9, Rohini, Delhi – 110085,
India.

...Appellant No. 2

RENU RELAN,
Director and Shareholder,
R/o 8590, East Park Road,
82, Model Basti,
Karol Bagh, Delhi – 110005,
India.


...Appellant No. 3

VERSUS

THE REGISTRAR OF COMPANIES
4th Floor, IFCI Towers,
Nehru Place, New Delhi - 110019

.....Respondent

For the Appellant : Mr. Mohd. Nazim Khan, Company Secretary



For the Respondent/RoC : Mr. Shobhit Srivastava, Deputy Registrar of Companies

**For Income Tax
(Upon notice by tribunal) : Ms. Lakshmi Gurung
(Standing Counsel for Income Tax Deptt.)**



ORDER

Delivered on: 28 .08.2018

1. This is an appeal which has been preferred u/s 252 of the Companies Act, 2013 by the Appellants in relation to an order of striking off the name of the Company passed by the Respondent with effect from 07.06.2017 under the provisions of Section 248 of the Companies Act, 2013. Learned authorized representative for the Appellants represents that the Company was incorporated under the provisions of Companies Act, 1956 and has its registered office at 8545/82, Model Basti East Park Road, New Delhi-110005. The main object of the Company is to carry out business of Information Technology, Computers, software, hardwares, networking, internet, web designing, IT research and analysis, database management, call centre services and such other related activities and is carrying on the said business even as of today. Learned authorized representative for the Appellants represents that the Company has been filing its income tax returns with the Income Tax Authorities regularly. It is also submitted by the Learned authorized representative that the Company is operational as is evident from the fact that it has duly filed the GST returns regularly besides depositing PF and ESI dues of employees to the concerned organization. The certified copies of acknowledgement for the filing the same are placed on



record. However, despite the abovementioned compliance with the appropriate regulatory authority, compliance in relation to the provisions of Companies Act, 2013 with the Respondent RoC by filing annual returns and financial statements was not complied with by the consultant to whom the responsibility of filing was outsourced.

2. Upon notice to the Registrar of Companies, the RoC has filed its affidavit on 26.06.2018 saying that the present company was struck off by the office of respondent because of the fact that as per the records of the office of respondent neither the company was carrying on any operation for a period of two immediately preceding financial years nor had it obtained the status of a dormant company under Section 455 of the Companies Act, 2013.
3. Upon notice ordered to the Income Tax Department, the Department has filed its report on 25.06.2018 and upon consideration of the appeal it has concluded as follows:
 - i. Income Tax Returns filed for the assessment years 2013-14 upto 2017-18 with delayed filings for the Assessment Years 2011-12 to

2015-16 for which penalty proceedings have been initiated by the Income Tax Department.

ii. The assessee has deposited Rs. 4,00,000/- in cash with IDBI Bank Ltd., during the demonetisation period.

4. We have considered the plea of the Appellants and the representations of RoC as well as Income Tax Department. It is evident from the plea of the Appellant that it admits the default and does not question the due process undertaken by the RoC in striking off the name of the Company as envisaged under Section 248 of the Companies Act, 2013. The Appellant is seeking for the purpose of restoration of the Company's name in the register as maintained by RoC is relying on the ground that the Company as of date is carrying on the business for which it was incorporated and it is in operation. In order to sustain the said plea, the Appellants have placed before us the following documents:

- i. Certified true copy of annual accounts for the financial year 2015-16 and 2016-17.
- ii. Copies of receipt of Employee Provident Fund (EPF) deposited in EPF Authority for the wage months March – July, 2017.



- iii. Copies of receipt of Employee State Insurance (ESI) deposited with the ESI Authorities for the period May – June, 2017.
- iv. Certified true copies of bank statement issued by IDBI from 01.04.2016 till the date of defreeze of accounts of the Company showing numerous transactions.
- v. Copies of job orders received from government departments in the year 2016.

5. As submitted by the Ld. Counsel for the Appellants, it is seen that the Company has been functioning during the period in relation to which the name of the Company was struck off. However, this will not absolve the Company from filing the necessary returns and documents and adhering to the provisions of Companies Act, 2013 and an onus is placed on the Company to strictly comply with the provisions of Companies Act, 2013. Thus, considering the discretion vested in this Tribunal under Section 252 of the Companies Act, 2013 to order the restoration of the name of the company where the struck off company is able to demonstrate that there is a running business as on the date when the name was struck off and further, considering that it is just to do so and in the interest of all the stakeholders including the Company itself and in the abovesaid



circumstances the Appeal is allowed subject to the following directions namely:

The Company shall:

- (a) Within a period of 15 days from the restoration of the Company's name in the register being maintained by the RoC, the Company will file interalia its annual returns and balance sheets as well other compliances statutorily required to be made under the Companies Act, 2013 for the period from which there has been default with requisite charges/fees as well as additional fee/late charges.
- (b) That the Company out of its funds, set apart a sum of Rs.2,00,000/- and deposit the same with the Respondent/RoC to defray the cost and expenses as well as towards filing any additional fee in filing the returns and documents which has been failed to be filed leading to its name being struck off from the Register of Companies within a period of one month from the date of this order. In case of any amount payable in excess of the sum specified towards defraying the cost incurred by the Respondent/ROC and towards other amounts as



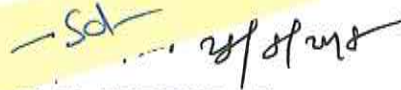
are required to be paid by the Company statutorily the same shall be remitted by the Company.

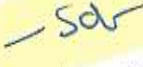
- (c) Till all compliances are made by the Company, it shall not alienate or dispose of any of its valuable assets.
- (d) It is further observed that by virtue of this order of restoration of the name of Company in the register it will not entitle the directors of the Company whose names have been disqualified by virtue of provisions of Section 164 of the Companies Act, 2013 by the Respondent/RoC to be automatically restored to directorship except in accordance with law.
- (e) An affidavit of compliance of the aforesaid directions shall be filed by the Company within a period of 2 months from the date of this order.
- (f) Further this order allowing the appeal shall also not circumscribe the power of the Respondent to proceed against the Company and its directors as mandated for alleged late filing of any forms, documents,



returns and such other compliance under the provisions of Companies Act, 2013.

The Appeal is disposed of accordingly.


(J.R. V. K. SUBBURAJ)
MEMBER (TECHNICAL)


28/8/18
(R.VARADHARAJAN)
MEMBER (JUDICIAL)

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