

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH - III

C.P. No.-335/ND/2017

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:

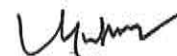
EXPRESS HOSPITALITY PRIVATE LIMITED

(Appellant Company)

VERSUS

THE REGISTRAR OF COMPANIES

(Respondent)



MEMO OF PARTIES:

**EXPRESS HOSPITALITY PRIVATE LIMITED,
Through Director Chander Kishore Singh,
Registered Office:
148-F Pocket-IV,
Mayur Vihar Phase-I,
New Delhi.**

...Appellant

VERSUS

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

...Respondent

For the Appellant : Mr. Rishi K. Awasthi, Advocate

**For the Respondent/RoC : Ms. Aparna Mudiam, Assistant Registrar of
Companies**

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



ORDER

Delivered on: 27 .08.2018

1. This is an appeal which has been preferred under Section 252 of the Companies Act, 2013 by the Appellant Company in relation to an order of striking off the name of the Appellant Company passed by the Respondent with effect from 30.06.2017 under the provisions of Section 248 of the Companies Act, 2013. Learned counsel for the Appellant represents that the Appellant Company was incorporated under the provisions of Companies Act, 1956 and has its registered office at 148-F, Pocket-IV, Mayur Vihar Phase-I, New Delhi, East Delhi DL-110091. The main object of the Appellant Company is to carry on the business of running and managing of hotel, motel, resorts, restaurants, bakeries, industries caterings, holiday condominiums, holiday time share condominiums camping sites, recreational vehicles and camping trailers, restaurant, café, banquet halls, tavern, conventions centers, shopping centers, golf course, Disney land, adventure and other sports facilities and allied facilities at different places in India and abroad. It is submitted that the annual returns and financial statements were not filed due to an inadvertent oversight.



2. Upon notice to the Registrar of Companies, the RoC has filed its affidavit on 29.11.2017 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 obtaining 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 07.03.2018 and upon consideration of the appeal it has concluded as follows:

A search & seizure operation was conducted in this case on 24.02.2010. The case was centralized vide order under section 127 of the Act passed by Ld CIT Delhi IV Delhi dated 12.07.2011. Consequent upon the search, notice u/s 153A of the Act was issued and the assessment was completed for the AY 2005-06 to 2010-11. The details of the Assessment is as under-

AY	ITR declared	Assessed income	Remarks
2005-06	6,120	6,120	No addition was made
2006-07	6,60,718/- Loss	2,37,720/-Loss	Disallowance of Rs.4,23,000/- was made
2007-08	2,58,345/- Loss	1,63,309/-Loss	Disallowance of Rs.95,036/- was made
2008-09	19,987/- Loss	19,987/- Loss	No additions were made
2009-10	1,47,869/- Loss	88,863/- Loss	Disallowance of Rs. 59,006/-

2010-11	1,613	Nil	-
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4. We have considered the plea of the Appellant 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 Appellant Company as envisaged under Section 248 of the Companies Act, 2013. In order to sustain the said plea, the Appellant has placed before us the following documents:

- i. Acknowledgement of Income Tax payments made and returns filed for the assessment year 2015-16 with Rs. 19,339 as payable tax and 2017-18 with Rs.97,686 as payable tax.
- ii. Independent Auditors report of the Company for the years 2013-14, 2014-15 and 2016-17.
- iii. Bank Reconciliation Statement with reference to Karur Vyasa Bank and Axis Bank for the years 2015, 2016 and 2017 showing substantial relevant transactions.



- iv. GST Chalan dated 29.08.2017 paid by Express Hospitality Ltd. along with GST Registration Certificate issued for the State of Madhya Pradesh.
 - v. Service Tax Returns filed for the year 2016-17.
 - vi. Salary Slips paid to employees of this Company, Security Staff and wages paid to the Regular and Daily Labourers.
1. As submitted by the Ld. Counsel for the Appellant, it is seen that the Appellant has been functioning during the period when the name of the Appellant Company was struck off. However, this will not absolve the Appellant from filing the necessary returns and documents and adhering to the provisions of Companies Act, 2013 and an onus is placed on the Appellant 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 Appellant Company itself and in the abovesaid

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

The Appellant Company shall:

- (a) Within a period of 15 days from the restoration of the Appellant Company's name in the register being maintained by the RoC, the Appellant 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 Appellant 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



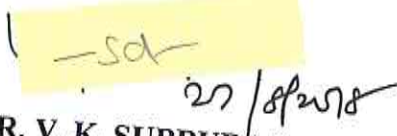
defraying the cost incurred by the Respondent/ROC and towards other amounts as are required to be paid by the Company statutorily the same shall be remitted by the Company.

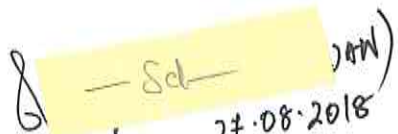
- (c) Till all compliances are made by the Appellant Company, the Appellant Company shall not alienate or dispose of any of its valuable assets.
- (d) It is further observed that by virtue of this order of restoration of the name of Appellant/Appellant Company in the register it will not entitle the 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 Appellant 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 Appellant 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.


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


(R. VARADHARAJAN)
MEMBER (JUDICIAL)

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