

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI**  
**BENCH - III**

**Appeal No.-184/2017**

**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:**

**HASAN ESTATES PRIVATE LIMITED**

**(Appellant Company)**

**VERSUS**

**THE REGISTRAR OF COMPANIES**

**(Respondent)**



**MEMO OF PARTIES:**

**HASAN ESTATES PRIVATE LIMITED,  
Through its member Mr. Mohammad Hamim,  
Registered Office:  
H. No. A-226, Old No.-B-31, S/F,  
Flat No. 202, Shaheen Abul Fazal Enclave,  
Part-II, Jamia Nagar, New Delhi- 110025**

**...Appellant**

**VERSUS**

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

**...Respondent**

**For the Appellant : Mr. Amrendra Kumar Rai, Company  
Secretary**

**For the Respondent/RoC : Ms. Aparna Mudian, 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 authorized representative for the Appellant represents that the Appellant Company was incorporated under the provisions of Companies Act, 1956 and has its registered office at H. No. A-226, Old No.-B-31, S/F, Flat No.202, Shaheen Abul Fazal Enclave, Part-II, Jamia Nagar, New Delhi-110025. The main object of the Company is to carry on the business as owners builders, colonizers, developers, promoters, proprietors, occupiers, lessors, interior decorators, civil contractors, maintainer and mortgagers of residential, commercial and industrial buildings, colonies, mill's and factory's sheds and buildings, workshop's buildings cinema's houses buildings and to deal in all kinds of immovable properties whether belonging to the Company or not. It is submitted that the employee responsible for filing the annual returns and financial statements



omitted to do the same and left the Company's employment without informing the Company about the non-filing.

2. Upon notice to the Registrar of Companies, the RoC has filed its affidavit on 11.12.2017 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 had 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 06.04.2018 and upon consideration of the Appeal it has concluded as follows:
  - i. Income Tax Returns filed for the assessment years 2016-17 and 2017-18 only on 26.07.2018. Not returns filed for the years 2013-14, 2014-15 and 2015-16 for which proceedings will be initiated.
  - ii. It is also mentioned that the Company is a habitual defaulter in filing IT returns.



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 questions 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. However, the Appellant is seeking restoration of its name in the register as maintained by RoC relying on the ground that the Appellant as of date is carrying on the business for which it was incorporated and it is in operation. The Appellant states that the Appellant Company has been active since incorporation and has also been maintaining all the requisite documentation, as per the provisions of the Companies Act, 2013 or the Companies Act, 1956 respectively. Further, the Company also owns immovable property situated at Plot No.4, Echotech Extn. Industrial Area, Distt. Gautam Budh Nagar, Greater Noida, which is under construction, for the purpose of its business. Now, due to the striking off of the name of the Company and disqualification of directors, the members/shareholder of the Company are not in position to develop the said property and in the circumstances, it is just that the name of the Company should be restored on the register of RoC as maintained by the Respondent. In order to



sustain the said plea, the Appellant has placed before us the following documents:

- i. Copy of the Acknowledgement of Income Tax return for the Assessment Year 2016-17 and 2017-18 filed after striking off of the Appellant Company's name.
  - ii. Certified Copy of the Bank Statement of Union Bank of India from 01.04.2017 to 18.10.2017.
  - iii. Copy of allotment letter given by Greater Noida Industrial Development Authority and details of construction on the property.
5. As submitted by the Ld. Counsel for the Appellant, it is seen that the Appellant owns the property in NOIDA and construction is being carried on, on the said property. Thus, it would be just to restore the Appellant Company's name in the Register of Companies maintained by the RoC. 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

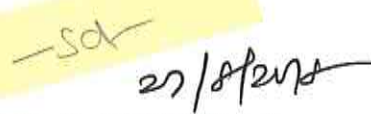
fee in filing the returns and documents which has been failed to be filed leading to its name being struck off from the Register of Companies within a period of one month from the date of this order. In case of any amount payable in excess of the sum specified towards defraying the cost incurred by the Respondent/ROC and towards other amounts as are required to be paid by the Company statutorily the same shall be remitted by the Company.

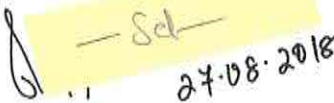
- (c) Till all compliances are made by the Appellant Company, the Appellant Company shall not alienate or dispose of any of its valuable assets.
- (d) It is further observed that by virtue of this order of restoration of the name of Appellant Company in the register it will not entitle the directors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