

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

**Appeal no- 291/252/ND18**

**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:**

**R D SYMPHONY ASSOCIATES CONSTRUCTIONS AND  
CONSULTANTS PRIVATE LIMITED  
(Petitioner Company)**

**VERSUS**

**THE REGISTRAR OF COMPANIES  
(Respondent)**



**MEMO OF PARTIES:**

**R D SYMPHONY ASSOCIATES CONSTRUCTION AND CONSULTANTS PRIVATE LIMITED**

REGISTERED OFFICE SITUATED AT:  
8, KRISHNA NAGAR COLONY PICKET,  
NEW DELHI KURNOOL, DL-110008  
CIN: U74899DL1990PTC040739

**...PETITIONER**

**VERSUS**

**The Registrar of Companies, Delhi & Haryana**

4<sup>th</sup> Floor, IFCI Tower,  
61, Nehru Place,  
New Delhi-110019

**....RESPONDENTS**

**For the Petitioner : Mr. AMRENDRA KUMAR SINGH, CO. SECY.  
/AR**

**For the Respondent: Mr. PUNEET RAI, STANDING COUNSEL,  
INCOME TAX DEPARTMEN,**

**ORDER**

**Delivered on: 04.09.2018**

1. This is an Appeal which has been preferred 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 07.06.2017 under the provisions of Section 248 of the Companies Act, 2013. Ld



Counsel for the Petitioner represents that the Appellant Company was incorporated under the provisions of Companies Act, 1956 and has its registered office at 8, Krishna Nagar Colony Picket, New Delhi Kurnool, DL-110008. The Company is primarily into the business of civil engineers, architects and contractors for the construction of buildings, dams, roads, industrial projects, industrial estates and other properties including of tanks, dams, lakes, canals, bridges, cross0drainage works, tunnels, culverts, drains, channels, power houses, navigation locks, docks, dry docks, jetties, wavers, reservoirs, overhead tanks, wells, tube-wells, sump-wells, sewage treatment plants, silos, irrigation systems, water supply, drainage, sewerage, flood control, hydro-electric, port and hardput works of every kind and to develop gardens and pleasure grounds and holiday resorts. In relation to compliance with the provisions of Companies Act, 2013 with the Respondent RoC by filing annual returns and financial statements it has been stated it has been omitted to be complied with and that the said omission is not mala fide. However, in view of non-filing of the Annual returns and Financial Statement, the name of the Petitioner Company from the register as maintained by the RoC has been struck off on and from 07.06.2017 and in view of demonstration of continued operation of the Company over the past years and presently also its business is being alive and running, it will seriously prejudice the interest of the Company and the Petitioners and that taking into consideration the compliances made



by the Petitioner in relation to other statutory authorities and since no one will be prejudiced if the Appeal is allowed, but on the other hand, the interest of all concerned including shareholders/creditors, employees of the Company will be seriously affected if the appeal is not allowed and the name of the company in the register of the RoC is not restored. It is also stated that prior to striking off the name of the company from the register by Respondent, due procedure as required under the provisions of section 248 of Companies Act, 2013 has not been followed.

2. Upon notice to the Respondent RoC, RoC has filed its reply to the above said Appeal. In paragraph 4 and 5 of the reply, the following has been submitted:

*"4. That the company had filed its Annual Return and Balance Sheet for the financial year ended on 31.03.2008 and 31.03.2008 respectively.*

*5. That the subject company was strike off w.e.f. 07.06.2017 in terms of provision of section 248(1) of the Companies Act, 2013 read with Rule 7 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016."*

3. It is evidenced from the report/observations as filed by the Respondent as represented by the Ld. Company Prosecutor that

Appellant had not filed its Annual Returns and Balance Sheets since financial year ended on 31.03.2008 due to which the Respondent had reasonable cause to believe that the petitioner company was inactive. However the Respondent represented by Ld. Company prosecutor insisted that due process of law prior to striking off was strictly complied with and in view of the Respondent not having received any communication from the Petitioner Company in response to the notice issued under sub-Section 1 and sub-Section 4 of Section 248 of the Companies Act, 2013 and Rule 7 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016, the Respondent was forced to follow the procedure for striking off and in the circumstances the decision for restoration is being left to this Tribunal for its consideration.

4. In relation to income tax upon notice directed to be issued, Income Tax has filed its observations, and concluded that the Appellant Company has been filing its returns of income regularly since AY 2007-08 and the last return filed by the assessee is for the A.Y. 2017-18 and has paid taxes amounting to Rs. 19, 070/-. And according to the records of the Income Tax Department the appellant is a regular tax payer and there are no proceedings pending in this case, and has no objection in revival of the company as the interest of revenue is involved.



5. Perusal of the documents annexed, along with the appeal, it is seen that the appellant has enclosed form 26AS being the TDS deposited to its credit, predominantly in relation <sup>to</sup> transactions as contemplated u/s 194 C of the Income Tax act, 1961 and the transactions being those in relation to payments to contractors and sub-contractors from CENTUARY FIBRE PLATES PRIVATE LIMITED as well as from other customers of the appellant. The TDS certificates have been filed for Financial year 2014-15, 2015-16, and 2016-17 correlating with the Assessment Year 2015-16, 2016-17 and 2017-18 respectively. From the above, it is evident that the appellant for the 2 years immediately preceding the date of striking off has been carrying on business/ operations as the nature of business is with respect of contracts. In addition to form 26 AS, as referred to above the appellant has also filed;

- I. Copy of bank statement of UCO Bank, from 01.03.2009 to 07.02.2018.
- II. Balance sheet for the financial year ended 31.03.2010 to 31.03.2017 with a total revenue of Rs. 2948570 as on 31.03.2017, Rs. 619279 as on 31.03.2016 and Rs. 1750000 as on 31.03.2013.
- III. Copy of income tax returns for the assessment year 2011-12 to 2017-2018, TDS for Rs. 12000/- with gross total income

of Rs. 95069/- for the A.Y. 2017-18 and Gross Total Income of Rs. 21526/- for the A.Y. 2016-17.

6. As submitted by the Ld. Counsel for the Appellant, it is seen that the Appellant has been consistently complying with the other statutory formalities which is also vouched by Income Tax Department. However, it will not absolve the Appellant from filing the necessary returns and documents and adhere to the provisions of Companies Act, 2013 as an onus is placed on the Appellant to strictly comply with the provisions of Companies Act, 2013 without any let. However in the instant case the Appellant has demonstrated mitigating circumstances and taking into consideration the provisions of Section 252 of the Companies Act, 2013 which vests this Tribunal with a discretion where the Company whose name has been struck off without due procedure having not been followed and such Company is also 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 as maintained by the Registrar of Companies. However it is seen from the ROC's reply that the Company has failed to file its Annual Returns and Balance Sheets since 31.03.2008 which is rightly irresponsible on the part of the Appellant Company and its Promoters which entails enhanced costs being levied on the Appellants. This Tribunal while considering the



appeal has also taken into account the representation of the revenue through its standing counsel that Income Tax Department does not have any objection, if the restoration of the name of the company struck off is permitted. Taking into consideration the interest of stakeholders including the shareholders who have sought for the restoration of the name of the Company in the register being maintained by RoC and in view of the circumstances elucidated above and the respondent will not be prejudiced and in the absence of any adverse consequences being demonstrated by the statutory authorities to whom notices had been issued, the Appeal is allowed subject to the following directions namely:

The Appellant/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 inter alia 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. <sup>(Rupees Three Lakhs)</sup> 3,00,000/- and deposit the same with the Respondent/RoC


which amount shall be for the purposes of payment of all fees/charges as contemplated in clause (a) above as well as to defray the cost and expenses of Register of Companies incurred in striking off, 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. Any excess amount left after appropriating for all the above shall be meticulously returned by Respondent to the Appellant.

- (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 in case have been disqualified by virtue of provisions of Section 164 of the Companies Act, 2013 by the Respondent/RoC automatically to be restored to directorship except in accordance with law.



- (e) An affidavit of compliance of the aforesaid directions shall be filed by the Appellant 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.

  
4/9/2018  
**(Dr.V.K.SUBBURAJ)**  
**MEMBER (TECHNICAL)**

U.D.Mehta / K

  
04/09/18  
**(R.VARADHARAJAN)**  
**MEMBER (JUDICIAL)**