

IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT-III
NEW DELHI

Appeal No.23/252/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:

RICH HEIGHTS CONSTRUCTIONS PRIVATE LIMITED
(APPELLANT)

VERSUS

THE REGISTRAR OF COMPANIES
(RESPONDENT)



MEMO OF PARTIES:

1. RICH HEIGHTS CONSTRUCTIONS PRIVATE LIMITED

C-7/ 127, IIIIRD FLOOR SECTOR-5,

ROHINI, NORTH DELHI-110085,

CIN: U45200DL2010PTC207951

2. SATISH KUMAR JHA (DIRECTOR)

S/O, MR. SITA RAM JHA,

HOUSE NO. G-5, MANGOLPURI,

NEW DELHI-110083

...PETITIONER

VS.

REGISTRAR OF COMPANIES

NCT OF DELHI & HARYANA

4TH FLOOR, IFCI TOWER 61,

NEHRU PLACE, NEW DELHI- 110019

..RESPONDENT

For the Appellant: Mr. Amrendra Kumar Singh, PCS

For the respondent and

the Intervener: Ms. Easha Kadian for Ms. Lakshmi Gurung,
St. Counsel, Income Tax Department



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 Appellant represents that the Appellant Company was incorporated under the provisions of Companies Act, 1956 and has its registered office at C-7/127, IIIrd Floor, Sector-5, Rohini, North Delhi-110085. The Company is primarily into the business as civil contractors, owners, builders, colonizers, Developers, promoters, proprietors, occupiers, lessors, interior decorators, maintainer of residential, commercial and industrial buildings, mall, multiplexes, township projects, infrastructure projects, IT parks, STIP colonies, stone crusher, mills and factory's sheds and buildings, workshops buildings cinemas houses buildings and other infrastructures projects to deal in all kinds of immovable properties whether belonging to the company or not in India and abroad. 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 Appellant 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 its business being alive and running, it will seriously prejudice the interest of the Company and the Appellants and that taking into consideration the compliances made by the Appellant 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 if the name of the company in the register of the RoC is not restored.

2. Upon notice to the Respondent RoC, RoC has filed its reply to the above said Appeal. In paragraph 3 and 4 of the reply, the following has been submitted:

"3. That the company had filed its last Annual Return and Balance Sheet for the financial year on 31.03.2013 and 31.03.2013.

4. 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 and as represented by the Ld. Company Prosecutor that Appellant had not filed its Annual Returns and Balance Sheets since 31.03.2013 due to which the Respondent had reasonable cause to believe that the petitioner company was inactive. 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 to the following effect:

Details of ITRs filed if any	A.Y.	Date of filing	Income/ Loss (returned)	Taxes Paid
	2012-13	15.02.2013	41,126	Nil
	2013-14	30.09.2013	5,16,747	1,63,755



	2014-15	Not filed		
	2015-16	Not filed		
	2016-17	31.03.2018	38,850	13,180
	2017-18	31.03.2018	9,460	2,970

It is also concluded from the report of the income tax that the prosecution proceedings are pending u/s 276CC of the Income Tax Act for the Assessment year 2014-15.

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 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 YFC PROJECTS PRIVATE LIMITED as well as from other customers of the appellant. The TDS certificate have been filed for Financial year 2015-16 and 2016-17 correlating with the Assessment Year 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 consultation. In addition to form 26 AS, as referred to above the appellant has also filed;



- I. *Copy of bank statement of IDBI Bank, from 02.04.2013 to 30.09.2017.*
- II. *Balance sheet for the financial year ended on 31.03.2014, 31.03.2015, 31.03.2016, 31.03.2017 indicating total revenue as on 31.03.2016 and 31.03.2017 as Rs. 76,47,608/-and Rs. 28,61,045/- respectively.*

6. As vouched by the Income Tax Department it is seen that the Appellant has been ~~consistently~~ complying with the other statutory formalities. Further it is also seen that the Appellant Company had been carrying business two years prior to striking off, all of which are evidenced from a combined reading of financial statements and Bank Statements. Thus 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 31.03.2013 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.

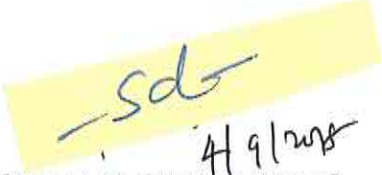


- (b) That the Appellant Company out of its funds, set apart a sum of Rs.2, 00,000/- and deposit the same with the Respondent/RoC which amount shall be for the purposes of payment of all fees/charges as contemplated in clause (a) above as well as to defray the cost and expenses of Register of Companies 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.

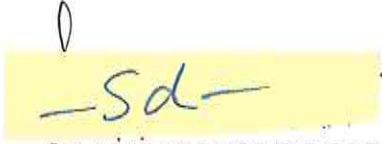


- (e) The Appellant Company is also directed to deposit the Income Tax Dues which has been pending since 2012-13 in case of pending appeal, application for rectification.
- (f) An affidavit of compliance of the aforesaid directions shall be filed by the Appellant within a period of 2 months from the date of this order.
- (g) 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.


4/9/18
(Dr.V.K.SUBBURAJ)
MEMBER (TECHNICAL)

U.D.Mehta / K


04/9/18
(R.VARADHARAJAN)
MEMBER (JUDICIAL)