

**NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
AHMEDABAD**

Co. Appeal No. 318 /252(3)/NCLT/AHM/2018

Coram: **Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER JUDICIAL**  
**Hon'ble Ms. MANORAMA KUMARI, MEMBER JUDICIAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH  
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 31.08.2018**

Name of the Company: Naman Agrawal  
(Mantra Devcon Pvt Ltd)  
V/s.  
Registrar of Companies, MP.

Section of the Companies Act: Section 252(3) of the Companies Act, 2013

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
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**ORDER**

None present for the appellant as well as for ROC. <sup>the</sup> <sub>n</sub>

The Order is pronounced in the open court, vide separate sheet.

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**MANORAMA KUMARI**  
**MEMBER JUDICIAL**

Dated this the 31<sup>st</sup> day of August, 2018

*H.P.*  
**HARIHAR PRAKASH CHATURVEDI**  
**MEMBER JUDICIAL**

**BEFORE NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH**

**Co. Appeal No. 318/252(3)/NCLT/AHM/2018**

**In the matter of:**

M/s. Mantra Devcon Private Limited

**In the matter between:**

Mr. Naman Agrawal  
S/o Mr. Nitin Agrawal  
Chuna Bhatti 1  
Mount View Villas  
Bhopal-462 016  
Madhya Pradesh

..... Appellant

**Versus**

Registrar of Companies  
3<sup>rd</sup> Floor, 'A' Block  
Sanjay Complex  
Jayendra Ganj  
Gwalior-474 009  
Madhya Pradesh

..... Respondent

**Order delivered on 31<sup>st</sup> August, 2018.**

**Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (J)  
Hon'ble Ms. Manorama Kumari, Member (J)**

**Appearance:**

Mr. Jay Surti, PCS, for the Appellant.  
None for the ROC.

**ORDER**

**[Per: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (J)]**

1. By this Appeal, the appellant being Shareholder/Director of the Company, viz., M/s. Mantra Devcon Private Limited, has sought restoration of its name which stood struck off from the Register of Companies by the Registrar of Companies, Gwalior, Madhya





Pradesh ["ROC" for short]. The relief as being sought for in the present appeal are stated as under: -

- (i) to grant an order restoring the name of the Company, to the register of ROC.**
- (ii) to remove disqualifications of directors in pursuance to the provisions of Section 164(2) of the Companies Act, 2013, as may deem fit, upon completion of filing of pending Annual Returns and Financial Statements since incorporation.**
- (iii) to defreeze the Bank Account of the Company having the HDFC Bank vide account no.10582320000617.**
- (iv) to exempt from the cost to Ministry of Corporate Affairs, towards the cost incurred by the Government in striking of the name of the company.**

2. The facts in brief, those are necessary for disposal of the present Appeal, are stated as under;
3. The appellant has stated that the ROC vide its Public Notice No. ROC-G/248(5)/2017/2915 dated 09.06.2017 (issued in Form No. STK-7) followed by final notice (issued under sub-section(5) of Section-248 of the Companies Act, 2013), has struck off the name of the Company from the Register of Companies with effect from 09.06.2017 inter alia on such ground that the Company has failed to file its statutory returns such as financial statements and annual returns since its incorporation, hence, the Registrar of Companies initiated statutory action under Section-248(1) of the Companies Act, 1956.
4. The appellant company was incorporated on 12<sup>th</sup> September 2012 and its registered office at E-5/16, Above Top N Town, Bittan Market, Bhopal-462 016, Madhya Pradesh.

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5. It is further contended in the present appeal that the company was incorporated with its following main objects:
- 1) to carry on the business activities as developers of land, colonies, sheds, buildings, structurers, residential plots, commercial plots, industrial plots, and sheds, roads, bridges, channels, culvers and to act as designers, contractors, sub-contractors, for all types of constructions and developments work for private sector, government departments, semi government departments and to develop the sites and plots and to carry on the business activities of acquirer, purchaser, lease, exchange, hire or otherwise all types of land, and properties of any tenure or any interest in the same or to erect and construct houses, building, multi-stories, or to work for every descriptions on any land of the company or upon other land or property and to pull down re-build, enlarge, alter, and improve, existing houses, buildings, or work thereon and to purchasing and selling of houses and plots free hold or other house property, building or lands or interest, household articles and other products of other companies in the instalments, network scheme or otherwise and to act as commission agent and to offer various types of incentives, schemes from time to time either directly or in collaboration with any other individuals, firms, bodies corporate in India or elsewhere and to educate people for side work, entertainment and side work, personality development.
  - 2) to carry on the business of contractors, sub-contractors, quasi contractors whether for government or for semi government bodies or corporation or company or society or body corporate or firms or individuals or schools or clubs or other bodies or private works and to undertake contracts and sub contracts relating to construction, modification, repairing, alteration, construction, removal, redecoration, redesigning, enlarging, improving and designing of civil work, building for whatever use, roads, approach roads, streets, circles, squares, courts, alleys, pavements, similar construction, levelling or paving work, parks, gardens, statues, parking places, bridges, dams, water courses and reservoirs, tunnels, earth works, sewers, tanks, drains, sewage, light houses, towers, transmission towers, pipe lines, underground cables, railway tracks, railway sidings, run ways ship yards, stock yards, culverts, channels whether on turnkey basis or on labour contracts or

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otherwise and for these purposes to purchase, take on lease or otherwise acquire and hold any lands.

6. The appellant has further filed an additional affidavit by deposing that it is not a shell company nor any unusual transaction took place during the period of demonetization.
7. The appellant submits in the present appeal that the company could not file its Financial Statements and Annual Return in pursuance of the provisions of Section-220 & 159 of the Companies Act, 1956 & Section-137 & 92 of the Companies Act, 2013, with the Office of the ROC since its incorporation. It is further submitted that due to lack of knowledge and inadvertence the appellant could not make compliance of above stated statutory provisions by filing requisite returns and documents. It is further submitted that the company at present is not a going concern, but it intends to file all the pending returns and the documents before MCA and also propose to be closed.
8. In response to the notice issued in respect of the present appeal, the ROC, MP, has filed his Representation dated 8<sup>th</sup> August 2018 and has denied all the allegations made and the contentions raised therein. The ROC has further stated that the name of the Company stood struck off, because it failed to file its Statutory Returns i.e. Annual Returns, Balance Sheets & P/L Account for the Financial Year 2012-13 to 2016-17. The ROC has further submitted that the present Appeal can be considered by this Court on its merits and the name of the Company may be restored subject to some assurance from the appellant to make



all statutory compliance on behalf of the Company and further payment of cost to be paid to the Central Government.

9. In the present matter, the Income Tax Department filed its representation stating that it has no objection for restoration of name of the company subject to the fulfilment of all other conditions as well as subject to filing of statutory returns including Tax compliances.
10. The Appellant, Mr. Naman Agrawal, has preferred the present Appeal, under Section-252(3) of the Companies Act, as being a Shareholder/Director of the company, hence, he is entitled for filing the same seeking for restoration of the name of the company. Thus, the present Appeal is found maintainable. As the name of the Company, M/s. Mantra Devcon Private Limited., stood struck on 09.06.2017 from the Register of Companies, Gwailor, Madhya Pradesh, and the same was got further published in the Gazette of India, while the present Appeal is filed on 15<sup>th</sup> June, 2018. Hence, it is found to be filed well within limitation.
11. By perusal of the material available on record, the main reason shown for striking off the name of the Company, M/s. Mantra Devcon Private Limited, is that the Company has failed to file its Annual Returns, Balance Sheets & P/L Account for the Financial Year 2012-13 to 2016-17 with the Registrar of Companies.
12. The material available on record reflects that the Company was not a going concern. Moreover, the present appellant has also proposed to close down the company after filing of its requisite

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documents/statutory returns before the MCA. Since name of the company already stood struck off before moving such Application for its closure, it could not be done. Hence, the present Appeal before this Tribunal for activation of DINs for Directors of the struck off company.

13. The Registered Office of the Company is situated at E-5/16, Above Top N Town, Bittan Market, Bhopal, Madhya Pradesh-462 010.
14. In the present Appeal, the Income Tax Department duly filed its representation stating that its office is having no objection for the said restoration of the name of the company subject to fulfilment of all conditions.
15. We duly considered the issue relating to restoration of the defunct Company's name to the Registrar of Companies and the circumstances in which a Company Court can exercise its power, we feel appropriate to place reliance on a decision of the Hon'ble High Court of Andhra Pradesh, in the case of **Velamati Chandrasekhara Janardan Rao** (*Supra*), the relevant extract thereof is being reproduced here in below:

*"11. In M.A. Panjwani v. Registrar of Companies and another, considered 4 scope of Section 560(6) and the meaning of words 'otherwise just' held as follows;*

*11. Under sub-section (6) of Section 560 of the Companies Act, 1956 the company court has the power to order restoration of the company's name to the registrar of companies on the application made by the company itself or its member or creditor. Such an application can be made at any time before the expiry of 20 years from the publication*

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of the notice for striking off the name published in the official gazette. There are only two circumstances in which the company court can exercise the power. The first is when it is satisfied that the company was, at the time of striking off its name from the register, carrying on business or was in operation. The second circumstance is when it appears to the company court that it is "otherwise just" that the name of the company be restored to the register. Obviously petitioner is not the company itself therefore, he has to be either a member creditor. It was submitted on behalf of ROC that the petitioner is neither member nor a creditor of the company.

14. Quite apart from the above position, the sub-section recognises that if the Court is of opinion that it is "otherwise just" that the company be restored to the register, restoration can be ordered. The argument addressed on behalf of the ROC to the effect that the word "just" has to be understood in the background of the specific language of the sub-section on the basis of the principle of ejusdem generis does not appeal to me. As I read the sub-section, there are two situations in which the company court can order restoration. One is when the company was carrying on business or was in operation at the time of striking off its name. The second situation, which is an alternative situation, is one where it appears "just" to the company court that the name of the company be restored to the register. I do not see any scope for the application of the rule of ejusdem generis because of the presence of the words "or otherwise" between the words providing for the two types of situations. The presence of the words "or otherwise" denotes that even if the company was not carrying on any business or was not in operation at the time of striking off, it is still open to the company court to order restoration if it appears to the Court to be "otherwise just". I may add that the words "or otherwise" have not been generally construed ejusdem generis as seen from the judgments of the Supreme Court in *Lilawati Bai v. State of Bombay*: (AIR 1957 SC 521) and *Kavatlappara Kottarathil Kochuni v. State of Madras*: (AIR 1960 SC 1080).

15. In *Helen C. Rebella v. Maharashtra S.R.T.C.*: (1999) 1 SCC 90, it was observed by the Supreme Court that the word "just" denotes equitability, fairness and reasonableness having a large peripheral field. In understanding its scope, one must take into account all the facts and circumstances of the case and then decide what would be just and equitable. In *M.A. Rahim and another v. Sayari Bai*: (AIR 1973 Mad.83) it was held by a Division Bench of the Madras

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High Court that the word "just" connotes reasonableness and something conforming to rectitude and justice, something equitable and fair. In Sidhant Garg and another v. Registrar of Companies and others: (2012) 171 Comp.Cas.326 it was held by this Court (Manmohan, J.) that the word "just" would mean that it is fair and prudent from a commercial point of view to restore the company and that the Court has to examine the concept of "justness" not exclusively from the perspective of a creditor or a member or a debtor, but from the perspective of the society as a whole. The special facts of the present case attract this principle. The respondent has received monies from the petitioner. He was entrusted with the job of finding a house for the petitioner in Delhi. The averments in the petition prima facie indicate that the property "Jodhpur Gardens" was purchased not in the name of the petitioner but in the name of the company. The shares held by the petitioner in the company were also taken away from him without his knowledge or consent. The settlement entered into between Quli and Singhania by which the shares were transferred to Quli was held by this Court to be collusive. These are disputes which are pending in the trial court. The company is a defendant in the trial court. If its name is not restored, it would cause injustice to the petitioner and also cause prejudice to the trial as a whole. The message sent to the society as a whole, if the name of the company is not restored to the register, would be quite disturbing. The petitioner has to be protected in the litigation pending before the trial court. As observed by the Indore Bench of the Madhya Bharat High Court in Bhogi Lai Chimun Lai v. Registrar, Joint Stock Companies: AIR 1954 M.B. 70, the effect of the order of the Registrar of Companies striking off the name of the company from the register would be that the company will be deemed to be dissolved and it may be difficult for the petitioner to obtain any relief in the suit pending before the trial court. It is not also known whether the company had brought to the notice of the ROC about the pendency of the litigation in the trial court. If it had, perhaps the ROC would not have struck off the name from the register."

16. By following the above stated judicious precedents and by considering the facts and circumstances of the present case, we are of the considered view that it is just and equitable to restore

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the name of the Company,, M/s. Mantra Devcon Private Limited., in the Register of Companies maintained by the ROC, Gwalior, Madhya Pradesh, so as to enable the company to remove the defects of disqualification, if any, of its Directors, which is imposed under Section-164(2) of the Companies Act, 2013, and further to allow them to file all statutory returns before their decision for closing down the company.

17. Therefore, the present Appeal is conditionally allowed. The Registrar of Companies, Gwalior, Madhya Pradesh, is directed to restore the name of the Company in the Register of Companies subject to complying with following conditions by the appellant;
- (i) The Appellant shall file all its overdue statutory returns with fee and additional fee as required under the Companies Act; and other laws within stipulated period stated therein, or within 90 days from the receipt of an authentic copy of this order and after restoration of the name of the company in the Registrar of Companies, Gwalior, Madhya Pradesh.
  - (ii) The Appellant shall publish a Notice in leading newspapers having wide circulation in the District as well as in the Official Gazette of the Government of India with regard to restoration of the name of the Company in the Register of Companies as maintained by the Office of the Registrar of Companies, as per the draft notice approved by the Registrar of Companies at the expenses of the Appellant;


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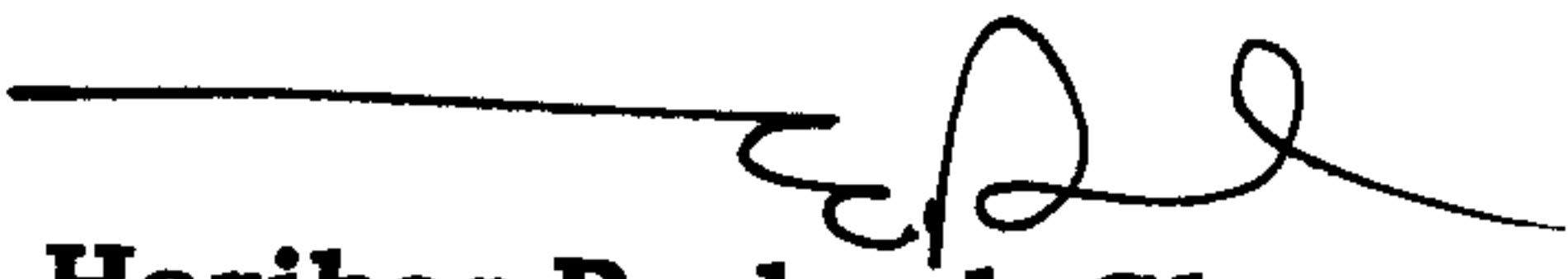
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(iii) The Appellant shall also pay an amount of cost Rs.25,000/- to the Central Government, Ministry of Corporate Affairs, through the Office of ROC, by way of Demand Draft drawn on Nationalised Bank towards the cost incurred by the Government in striking off the name of the Company, within 3 (three) weeks from the date of receipt of an authentic copy this order and shall file compliance.

18. The Appellant as well as the Registry is directed to communicate a copy of this order to the concerned Income Tax Department and the ROC, MP, at Gwalior, for information and necessary action.

19. With the aforesaid observation, the present appeal is conditionally allowed and stands disposed of.

  
**Manorama Kumari**  
Member (Judicial)

  
**Harihar Prakash Chaturvedi**  
Member (Judicial)

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