

**NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
AHMEDABAD**

Co. Appeal No. 66/252(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 03.10.2018**

Name of the Company: Sundeep Chordia & Anr.  
(Mid-Way Infrabuild Pvt Ltd)  
V/s.  
ROC, Gwalior, 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 the ROC.

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

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

  
**HARIHAR PRAKASH CHATURVEDI**  
**MEMBER JUDICIAL**

Dated this the 3<sup>rd</sup> day of October, 2018

**BEFORE NATIONAL COMPANY LAW TRIBUNAL  
GWALIOR BENCH**

Co. Appeal No. 66/252(3)/NCLT/AHM/2018

**In the matter of:**

**M/s. MID-WAY INFRABUILD PVT. LTD.**

**In the matter between:**

1. Mr. Sundeep Chordia  
F-14, Ratlam Kothi,  
Indore, 452001,  
Madhya Pradesh

2. Mr. Niraj Betala  
17-B, Ma Durga Nagar,  
Indore- 452001,  
Madhya Pradesh

..... Appellants

**Versus**

Registrar of Companies,  
ROC Gwalior,  
3<sup>rd</sup> Floor, 'A' Block,  
Sanjay Complex, Jayendra Ganj,  
Gwalior, 474009,  
Madhya Pradesh

..... Respondent

**Order delivered on 3<sup>rd</sup> October, 2018.**

**Coram: Hon'ble Mr. Harihar Prakash Chaturvedi Member (Judicial)**

**Hon'ble Ms. Manorama Kumari, Member (Judicial)**

**Appearance:**

PCS Mr. Manish Buchasia is present for the Appellant

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

1. By this Appeal, the Company namely, M/s. Mid-Way Infrabuild Pvt. Ltd., seeks for restoration of its name in the Register of the Companies as maintained by the ROC, Gwalior. The Registrar of

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Companies, Gwalior ["ROC" for short] vide its impugned order dated 09.06.2017 has struck off the name of the Company from its Registrar. Being aggrieved with such action the present Appellant being a Shareholders of the Company has preferred the present appeal praying for grant of following relief: -`

- (i) That this Hon'ble Tribunal may issue notice to the Respondent and after hearing the parties allow the Company appeal directed to the Registrar of Companies, Gwalior (Respondent) to restore the name of the Company (Mid-Way Infrabuild Pvt. Ltd.) in the Register of Companies as maintained by its office, as its name had never been struck off from the rolls of the Register.*
- (ii) To Permit the Company to file the pending annual returns and financial statements for the year 2013-2014, 2014-2015, 2015-2016 and 2016-2017.*
- (iii) To Remove the disqualification of Ex-directors of the Company imposed under Section 164(2) of the Companies Act, 2013.*
- (iv) To restore the Certificate of incorporation of the company from its original date of incorporation,*

2. The facts in brief, which are necessary for disposal of the present Appeal are stated as under;

- i. It is stated that the ROC, Gwalior vide its Public Notice No. ROC/AHMD/248(5)/2017/2915 dated 09.06.2017 (issued in Form No. STK-7) followed by a final notice (which was issued under sub-section (5) of Section 248 of the Companies Act, 2013), has struck off the name of the Company from its

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Register with effect from 09.06.2017 on Su-Moto basis due to failure of company in filing of its Annual returns and balance sheet for the financial year 2013-2014 to 2016-2017.

- ii. It is submitted that the Company was originally incorporated on 15<sup>th</sup> December, 2010 with an object to carry on the business of builders, colonizers, farm house developers, landowners, contractors, designers, agents, brokers, supervisor, administrator, intermediators, advisor, project-consultant, let out, maintain, acquire, lease, purchase, sale any new of existing and/or to undertake the job of designing, restructuring, renovating, re-flooring, repairing, altering, enlarging, reducing, rebuilding, raw material, flats, town ships, shopping mall, commercial building, centres' for offering all types of comprehensive Entertainment facilities, godowns, shops, office, factory sheds, commercial property, industrial property etc.
  
3. In the present appeal the ROC, Gwalior has filed its representation dated 5<sup>th</sup> March, 2018 by denying the allegation of the appellants and has justified its impugned action contending such the name of the Company was struck off because the Company failed to file its statutory returns since 2013-2014 onwards. The ROC, in his representation however, has further submitted that this Court may pass an appropriate order for restoration the name of the Company subject to compliance of following condition to be made.

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*(i) That the said appeal may be decided on merit subject to filing of balance sheet due for the financial year 2013-2014 onwards with additional fees as per the requirement of Companies Act, 2013/1996.*

4. In the present appeal the representation from Income Tax Department is not received, even after proper service. However, the Company has stated that it has filed its Annual Income Tax returns for the A.Y. 2014-2015, 2015-2016 and 2017-2018 and TDS on its Income was also made by the Income Tax Authorities.
5. The Appellant Mr. Sundeep Chordia and Mr. Niraj Betala have filed the present appeal under Section 252(3) of the Companies Act as being Shareholders of the Company. Hence, they are entitled for the same seeking for restoration of the Company's name. Therefore, the present Appeal is found maintainable. Further, the name of the Company M/s. Mid-Way Infrabuild Pvt. Ltd., was struck off on 09.06.2017 from the Register of Companies and the same got published in the Gazette of India. While the present Appeal is filed on 20<sup>th</sup> February, 2018. Hence, the present Appeal is found to be filed well within limitation.
6. On perusal of the material available on record, the main reason shown for striking off the name of the Company is that the Company has failed to file its returns 2013-2014 on such ground that Company was unable to file its statutory documents as its Board of Directors

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were not aware of such statutory filings to be made before the ROC and due to lack of professional guidance and support to the management & Board of the Company about such statutory filing of annual returns and financial statement with the ROC. Hence the Board could not act upon.

7. A perusal of the material available on record also goes to show that the Company was a going concern and active since its incorporation. As the company was carrying on its business activities and it generated revenue from its business operations, which is stated as such :

*“the Company in matter is carrying on its business activities or operation in field of renting and real estate and construction. The revenue from the operations of the company in matter for last three financial years are as follows” :*

<b>Financial year</b>	<b>Revenue from Operation (In Rs.)</b>
2016-2017	1,54,39,567/- <i>(Rupees One Crore Fifty Four lacs Thirty Nine Thousand Five hundred Sixty Seven Only)</i>
2015-2016	1,64,57,889/- <i>(Rupees One Crore Sixty Four lacs Fifty Seven Thousand Eight Hundred Eighty Nine Only)</i>

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*[Signature]*

2014-2015	1,12,32,980/- (Rupees One Crore Twelve Lacs Thirty Two Thousand Nine Hundred Eighty Only)
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*“ The company has obtained land on vide registered Agreement to lease dated 4<sup>th</sup> April, 2014 situated at Khasra No. 237 (paiki), 238 (paiki), and 239/1 (paiki) admeasuring 3.257 hecq. Khajrana, Indore for the business purpose of the company for the period of 9 years. Copy of Agreement to lease is attached as “Annexure H” to the Appeal.*

*“ The Company has intercorporate borrowings amounting to Rs. 4.97 Crores”.*

8. In the present appeal the Appellant filed an additional affidavit by declaring that the Company is not a shell company and no unusual transaction were made during the demonetisation period.
- 9 By considering, the aforesaid aspects, of the present case, this Tribunal is of the considered view that it would be just and equitable to restore the name of the Company M/s. Mid-Way Infrabuild Pvt. Ltd., in the Register of the Registrar of Companies as maintained by the ROC, Gwalior, so as to enable the company for making statutory compliances and to remove defects of disqualification, if any, of its Directors imposed under Section 164(2) of the Companies Act, 2013.


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10. Therefore, the present appeal is allowed in terms of its relief clause. Consequently, the ROC, Gwalior, is hereby directed to restore the name of the Company in its Register of Companies but subject to compliance of following conditions by the appellant.

- (i) *The Appellant shall file all over due 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 its name in the Register of ROC, Gwalior.*
- (ii) *The Appellant shall publish a Notice in leading newspapers circulating in the District as well as in the Official Gazette of the Government of India with regard to the restoration of the name of the Company in the Register of Companies 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;*
- (iii) *The Appellant shall also pay cost for an amount of Rs. 1,00,000/- (Rupees One Lacs Only) payable to the Central Government, Ministry of Corporate Affairs through Office of the ROC, Gwalior 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*

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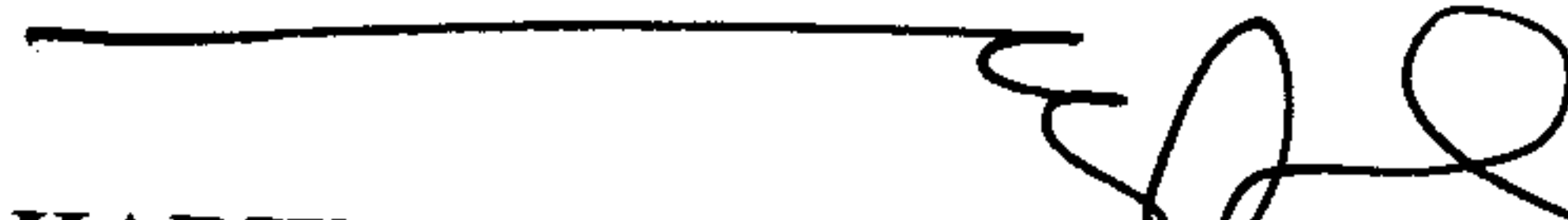


*4 (four) weeks from the date of this order and shall file compliance.*

11. With the above stated direction, the Co. Appeal is allowed and stands disposed of accordingly.



**Ms. MANORAMA KUMARI  
(MEMBER JUDICIAL)**



**Mr. HARIHAR PRAKASH CHATURVEDI  
(MEMBER JUDICIAL)**

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