

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

Co. Appeal No. 371/252(3)/NCLT/AHM/2018

Coram: **Hon'ble Ms. MANORAMA KUMARI, MEMBER JUDICIAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 20.09.2018**

Name of the Company: Sureshkumar Ambavi Wavia & Ors.
(Odhavraj Hotel & Resort Pvt.Ltd.)
V/s.
Registrar of Companies, Gujarat.


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>
1.	Arjun Joshi,	Adv.	Pet	Arj
2.	for, Nanavati Assoe.			

ORDER

Advocate Mr. Arjun Joshi i/b Nanavati Associates is present for the petitioner.

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


**MANORAMA KUMARI
(MEMBER JUDICIAL)**

Dated this the 20th day of September, 2018

**BEFORE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH**

Co. Appeal No. 371/252(3)/NCLT/AHM/2018

In the matter of:

M/s. Odhavraj Hotel & Resort Private Limited

In the matter between:

1. Mr. Himmatbhai Sureshkumar Ambavi Wavia
Flat No. 1201, 12th Floor, Tower 8
Sea Breeze CHS, Palm Beach, Plot 16
Sector 16, Nerul
NAVI MUMBAI 400 706 : Appellant No.1
2. Mr. Jayantilal Khimji Soni
1601, 16th Floor, Spenta Tower
Forjett Street, Tardeo
MUMBAI 400 036 : Appellant No.2
3. Mr. Rajendra Trikamji Tank
52/A, Shakti Nagar
Junavas Madhapar
Kutch, Bhuj 370 020 : Appellant No.3
4. Mr. Ramji Khimabhai Rajput
Post Lodrani
Tal. Rapar 370 165 : Appellant No.4
5. Mr. Dharmendrasinh Kamabhai Rathod
803, Jay Tower, B/h. Sun N Step Club
Memnagar
Ahmedabad 380 052 : Appellant No. 5

Versus

Registrar of Companies,
ROC Bhavan
Opp. Rupal Park
Nr. Ankur Bus Stand
Naranpura
Ahmedabad 380 013

Respondent

Order delivered on 20th September, 2018.

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

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Appearance:

Advocate Mr. Nandish Chudgar and advocate Mr. Shriraj Khambete is present for the appellants.

ORDER

1. By this Appeal, the Company namely, M/s. Odhavraj Hotel & Resort Private Limited, seeks for restoration of its name in the Register of the ROC. The Registrar of Companies, Ahmedabad, Gujarat ["ROC" for short] by its impugned order dated 21.06.2017 has struck off the name of the company. Being aggrieved with this action the appellant being director/shareholder of the company has prayed for the following relief: -

(i) direct the Registrar of Companies, Gujarat to restore the name of the company in the Register of Companies maintained in the office of the Registrar of Companies as its name had not been struck off from the rolls of the Register;

2. The facts of the present case as narrated in the present appeal, are described as under: -

That M/s. Odhavraj Hotel & Resort Private Limited was originally incorporated on 25.02.2009 with the Registrar of Companies, Gujarat. It is contended that the Registrar of the Companies vide its Notice dated 21.06.2017 (issued in Form No. STK-7) followed by a final notice issued under sub-section (5) of Section 248 of the Companies Act, 2013, has struck off the name of the Company from its register with effect from 21.06.2017, stating such ground that the Company has failed to file its statutory returns from 31.03.2011 onwards nor it



- applied within such period to the ROC for obtaining a status of dormant company under the provisions of the Companies Act.
3. On Notice being issued to and order of notice being served upon the ROC, has filed his Representation affidavit dated 18th September, 2018 by denying the allegations made and contentions of the appellant, it has justified its action by saying that the Company has failed to file its statutory returns viz., Balance Sheets and other returns with the ROC from 31.03.2011 onwards and due to such lapses the name of the Company stood struck off.
 4. Notwithstanding the above, the ROC, Ahmedabad in same representation has further contended that this court may pass an appropriate order for restoration of the name of the company subject to following conditions: -
 - (i) ***The petitioner will file all the overdue statutory returns viz. Balance sheet and Annual Return for the years which have not been filed and also other event based documents, if any, with fees and additional fees as required under the Companies Act, 2013.***
 - (ii) ***The publication of notice in two leading newspapers circulating in the district official Gazette of Government of India, in regard to the restoration of the name of the company on the register maintained in the office of the respondent as per the draft approved by the respondent, at the cost of the petitioner.***
 - (iii) ***The petitioner will ensure that the company will not make any default in filing of statutory returns in future as required under the Companies Act, 2013.***
 - (iv) ***The Tribunal may please be direct the petitioner to pay cost as may deem fit and proper to the Registrar of Companies for restoring the name of the company under Section 252 (3) of the Act as the respondent had incurred expenditure on sending notices, publication of notices in newspaper and official gazette in respect of striking off companies.***
 - (v) ***such other order as may be deemed fit and proper by this Tribunal under the circumstances of the case.***
 5. The present appeal is filed under Section 252(3) of the Companies Act as being a Shareholder/Director of the deregistered company. Hence they are eligible to file the same

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seeking for restoration of the Company's name in the register of the ROC, Ahmedabad. Hence, the present Appeal is found maintainable. As the name of the Company was struck off on 21.06.2017 from the Register of Companies followed by a publication in the Gazette of India, while the present appeal is filed on 23rd July, 2018. Hence it is filed well within limitation.

6. As per the material available on record, the main reason shown for striking off the name of the Company is that M/s. Odhavraj Hotel & Resort Private Limited failed to file Annual Returns and Balance Sheets with the Registrar of Companies from 31.03.2011 onwards.
7. The Registered Office of the Company is situated at 101, 1st Floor, Swagat Plaza-II, Opp. Ambli Village, Bopal Road, Ahmedabad 380 058, Gujarat State.
8. The appellant has submitted that the company was incorporated with an object to carry on the business of running hotel in all aspects, lodging and boarding etc.
9. No representation is received from Income Tax Department despite issuance of notice.
10. I have gone through the Appeal and the documents annexed thereto. It appears that the Company is not a going Company and as such the Deponent wants to close the Company by filing the required documents before the MCA, but since the Company has already been struck off before the filing of the Application for closure, the Appellant filed this Appeal before this Tribunal for restoration of the name of Company M/s. Odhavraj Hotel &

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Resort Private Limited in the Register of Companies maintained by the ROC, Gujarat, Dadra & Nagar Haveli.

11. In the context of the issue relating to restoration of the defunct Company's name to the Registrar of Companies and the circumstances in which the Company Court can exercise its power, it is necessary and expedient to refer to the following decision rendered by the Hon'ble High Court of Andhra Pradesh;
12. The Hon'ble Andhra Pradesh High Court in the Judgment delivered in the case of **Velamati Chandrasekhara Janardan Rao (Supra)**, in Para No. 11 has held as follows;

"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 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 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 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

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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."

13. In view of the above, the instant Appeal is allowed in terms of its relief clause. Consequently, the Registrar of Companies, Ahmedabad, Gujarat is directed to restore the name of the Company in the Register of Companies but subject to the following conditions complied 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, Ahmedabad.
- (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;

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- (iii) The Appellant shall also pay an amount of Rs. 25,000/- to the Central Government, Ministry of Corporate Affairs through Office of the ROC, Gujarat 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 authentic copy of this order and shall file compliance.

14. Accordingly the appeal is allowed and stands disposed of.


Ms. Manorama Kumari
Member (Judicial)

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