

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

Co. Appeal No. 132/252(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 29.08.2018**

Name of the Company: Virendra Kumar Agarwal
(Creative Infracom 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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1.

2.

ORDER

None appeared on behalf of the Appellant as well as ROC.

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


MANORAMA KUMARI
MEMBER JUDICIAL

Dated this the 29th day of August, 2018


HARIHAR PRAKASH CHATURVEDI
MEMBER JUDICIAL

**BEFORE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH**

Co. Appeal No. 132/252(3)/NCLT/AHM/2018

In the matter of:

M/s.Creative Infracom Private Limited

In the matter between:

Mr. Virendra Kumar Agrawal
Shareholder of Creative Infracom Private
Limited
House No.107, 108 Janki Nagar
Extention
Indore-452 001

..... Appellant

Versus

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

.....Respondent

Order delivered on 29th August, 2018.

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

Appearance:

PCS, Mr. Shilpesh Dalal, for the Appellant.
None for the ROC.

ORDER

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

1. By this present Appeal, the appellant being a Director/Shareholder of the Company, viz., Creative Infracom Private Limited, has sought for restoration of its name which stood struck off from the Register of Companies as maintained by the office of the Registrar of Companies, MP, Gwalior ["ROC"]





for short]. The relief as being sought for in the present appeal may be stated as under: -

- (i) **that, the applicant hereby humbly requests for granting orders for “removing the Strike off Status and restoring the status of Company Creative Infracom Private Limited (CIN:U45200MP2006PTC018986) to Active Company” into the records of MCA and ROC.**
- (ii) **that, the applicant hereby humbly requests for granting orders for removal of Disqualification of Directors and enabling the Company and its Directors to File the Forms and Returns with MCA, ROC and other Government Authorities.**
- (iii) **also requesting to pass any such other reliefs which this Bench of NCLT may think fit in favour of applicant and Company, in relation to Company, Shareholders, Directors and their Bank Account and Business.**

2. The brief facts of the case, those are necessary for disposal of the present Appeal, are stated as under;
- 3 It is 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 compliances, viz., Annual Returns and Balance Sheet for the Financial Years 2013-14 to 2016-17, hence, the Registrar of Companies initiated statutory action under Section-248(1) of the Companies Act, 1956.




4. The appellant company was incorporated on 22.09.2006 and having its registered office at House No.21, R.K. Puram Colony, A.B. Road, Indore, Madhya Pradesh-452 001.
5. The appellant further contended that the company was carrying on its business of Builders, general Constructions, Civil Construction, etc.
6. It is further submitted that Mr. Avtar Singh Bhatia, Mr.Virendra Kumar Agrawal, Mr. Khushwant Singh Bhatia and Mr.Sanjay Kasliwal were shareholders holding 2500 equity shares each. The Applicant and other two Share Holders of the Company has given their consent to restore the name and to revive the company as mentioned by filling a copy of the Board Resolution dated 3rd March, 2017, by authorizing the present Appellant to file an appeal and to enable the company to file Financial Statements, Balance Sheets and Annual Returns for Financial Years 2013-14, 2014-15 and 2015-16 and other documents and returns.
7. It is further submitted that the promoters of the company had started construction activities and were working hard to sell or lease out the constructed project. They were continuously in talk with various investors, entrepreneurs and businessmen for good price. But in the frequent and continuous changing business and legal environment, they found very difficult to sell the constructed work. If they are not given an opportunity to continue their business in the company and to restore the name of the Company in the register maintained by Registrar of



Companies, Madhya Pradesh, the shareholders and the company would be seriously prejudiced.

8. It is submitted by the appellant in the present appeal that the company could not file its financial statements and annual returns with the Office of the ROC, due to lack of knowledge and inadvertence. However, the company is a going concern.
9. The appellant further filed an additional affidavit with regard to this fact that it is not a shell company and no unusual transaction took place during period of demonetization.
10. On Notice being issued and order of notice being served to the ROC, he has filed his Representation dated 19th July, 2018, wherein he denied the allegations made and contentions raised in the Appeal, and justified its action, contending that since the Company has failed to file its statutory returns viz., Annual Returns and Balance Sheets & P/L Account for the Financial Year 2013-14 to 2016-17 with the ROC nor did it disclose the proof of filing of Income Tax Return, therefore, the company's name was struck off.
11. Notwithstanding the above, the ROC has further represented that the present Appeal can be considered as per its merits by this court and the name of the Company may be restored subject to assurance of making of all statutory compliance by the Company and further payment of cost to the Central Government.
12. In the present matter, no representation is filed by the Income Tax Department despite service of notice to it.





13. Mr. Virendra Kumar Agrawal, being a Shareholder and Director of the Company, has filed the present Appeal, under Section-252(3) of the Companies Act, hence, he is entitled to file such appeal seeking for restoration of the name of the Company. Therefore, the present Appeal is found maintainable. As the name of the Company, M/s. Creative Infracom Private Limited, was struck off on 09.06.2017 from the Register of Companies, Gwalior, Madhya Pradesh, and further got published in the Gazette of India, while the present Appeal is filed on 15th March, 2018. Hence, it is found to be filed well within limitation.
14. From perusal of the material available on record, the main reason seems for striking off the name of the Company, M/s. Creative Infracom Private Limited, is as such that the Company has failed to file its Annual Returns, Balance Sheets & P/L Account for the Financial Years 2013-14 to 2016-17 with the Registrar of Companies and it did not disclose the proof of filing of its Income Tax Return.
15. As per the material available on record, the Company was a going concern and it was doing business. The Registered Office of the Company is situated at House No.21, R.K. Puram Colony, A.B. Road, Indore, Madhya Pradesh-452 001.
16. By considering all the aforesaid aspects, this Tribunal is of the considered view that it would be just and equitable to restore the name of the Company, M/s. Creative Infracom Private Limited., in the Register of Companies maintained by the ROC, Gwalior, Madhya Pradesh, and to remove the defects of disqualification, if



any, as Directors, imposed under Section-164(2) of the Companies Act, 2013.

17. For the aforesaid reasons, the instant Appeal is allowed, the Registrar of Companies, Gwailor, Madhya Pradesh, is hereby directed to restore the name of the Company in the Register of Companies upon Appellant's complying with the following conditions;


- (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 Companies, Gwailor, Madhya Pradesh.
- (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 is further directed to pay an amount of Rs.25,000/- (Rupees Twenty Five Thousand Only) to the Central Government, Ministry of Corporate Affairs, through the Office of ROC, by way of Demand Draft drawn on

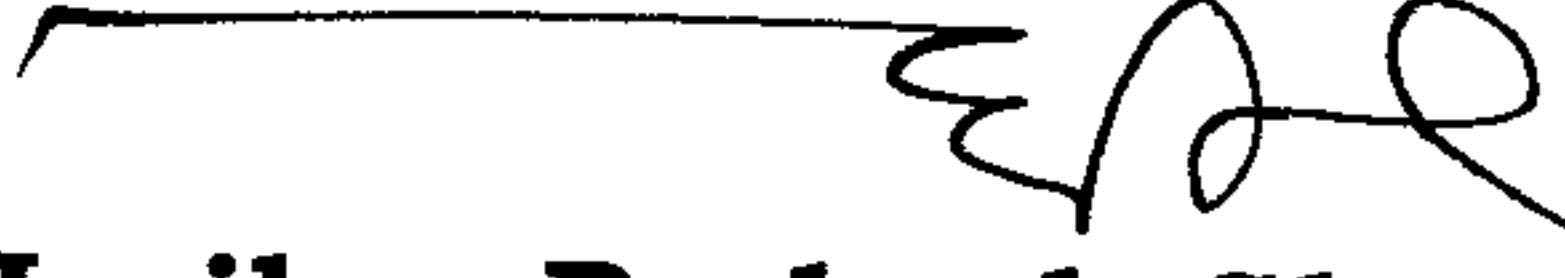




Nationalised Bank towards the cost incurred by the Government in striking off the name of the Company, within 3 (three) weeks from the date of receipt of an authentic copy this order and shall file compliance.

18. The Registry is directed to forward a copy of this order to the concerned Income-Tax Department.
19. The Appeal is allowed and stands disposed of accordingly.


Manorama Kumari
Member (Judicial)


Harihar Prakash Chaturvedi
Member (Judicial)

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