

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI**  
**BENCH - III**

**Appeal No.-188/2017**

**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:**

**VISHWAKARMA ENTERPRISES (INDIA) PRIVATE LIMITED & ANR.**

**(Appellant Company)**

**VERSUS**

**THE REGISTRAR OF COMPANIES**

**(Respondent)**



**MEMO OF PARTIES:**

**VISHWAKARMA ENTERPRISES (INDIA) PRIVATE LIMITED,  
Having its registered Office  
At E-136, Basement Kalkaji,  
New Delhi- 110001**

**...Appellant 1**

**AND**

**RAM KUMAR DHIMAN,  
R/o House No.28, Block16,  
Spring Field Colony,  
Sector 31, Faridabad,  
Haryana**

**...Appellant 2**

**VERSUS**

**THE REGISTRAR OF COMPANIES  
4<sup>th</sup> Floor, IFCI Towers,  
Nehru Place, New Delhi - 110019**

**.....Respondent**

**For the Appellant : Mr. Ram Kumar Dhiman, in person**

**For the Respondent/RoC : Ms. Aparna Mudiam, Assistant Registrar of  
Companies**

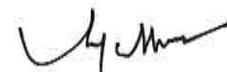
**For Income Tax  
(Upon notice by tribunal) : Ms. Lakshmi Gurung  
(Standing Counsel for Income Tax Deptt.)**



## ORDER

Delivered on: .2018

1. This is an appeal which has been preferred u/s 252 of the Companies Act, 2013 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 27.04.2017 under the provisions of Section 248 of the Companies Act, 2013. Learned authorized representative for the Appellant represents that the Appellant Company was incorporated under the provisions of Companies Act, 1956 and has its registered office at E-136, Basement Kalkaji, New Delhi- 110001. The main objects of company is to act as technical consultant, engineers, architect, planner, surveyors, design engineers, colonizers, civil contactors, builders, developers and realtor and to undertake all kind of infrastructure projects and surveys. It is submitted by the Learned authorized representative that the Company is operational as is evident from the fact that it has entered in various contacts with different corporate clients and vendors for furtherance of its main activity. However, compliance in relation to the provisions of Companies Act, 2013 with the Respondent RoC by filing annual returns and financial statements has not been complied with and the said omission is not mala fide.



2. Upon notice to the Registrar of Companies, the RoC has filed its affidavit on 01.02.2018 saying that the present company was struck off by the office of respondent because of the fact that as per the records of the office of respondent neither the company was carrying on any operation for a period of two immediately preceding financial years nor obtaining the status of a Dormant Company under Section 455 of the Companies Act, 2013.
  
3. Upon notice ordered to the Income Tax Department, the Department has filed its report on 28.03.2018 and upon consideration of the Appeal it has concluded as follows:
  - i. Income Tax Returns filed for the assessment years 2013-14, 2014-15, 2015-16, 2016-17 and 2017-18 regularly for the first three years and belatedly for the last two years.
  - ii. Nil tax dues are pending against the company.
  - iii. Neither any proceedings are pending against the company.
  
4. We have considered the plea of the Appellant and the representations of RoC as well as Income Tax Department. It is evident from the plea of the Appellant that it admits the default and does not question the due process



undertaken by the RoC in striking off the name of the Appellant Company as envisaged under Section 248 of the Companies Act, 2013. The Appellant is seeking for the purpose of restoration of its name in the register as maintained by RoC is relying on the ground that the Appellant as of date is carrying on the business for which it was incorporated. In order to sustain the said plea, the Appellant has placed before us the following evidences:

- i. Acknowledgement of Income Tax payments made and returns filed for the assessment year 2015-16 and 2016-17.
- ii. Certified true copy of annual accounts for the financial year 2011-12 upto 2016-17.
- iii. Form 26 AS for the AY 2015-16 and 2016-17.
- iv. Certified true copies of bank statement issued by State Bank of India, Kalkaji, New Delhi for the year 2015, 2016 and 2017.
- v. Order dated 04.04.2018 passed by ADJ, Saket Courts showing prosecutions being carried out by the Appellant Company.

5. However, this will not absolve the Appellant from filing the necessary returns and documents and adhering to the provisions of Companies Act,



2013 and an onus is placed on the Appellant to strictly comply with the provisions of Companies Act, 2013. Thus, considering the discretion vested in this Tribunal under Section 252 of the Companies Act, 2013 to order the restoration of the name of the company where the struck off company is able to demonstrate that there is a running business as on the date when the name was struck off and further, considering that it is just to do so and in the interest of all the stakeholders including the Appellant Company itself and in the abovesaid circumstances the Appeal is allowed subject to the following directions namely:

The 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 interalia 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.

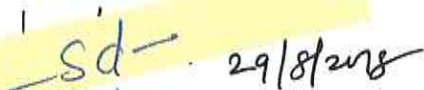



- (b) That the Appellant Company out of its funds, set apart a sum of Rs.2,00,000/- and deposit the same with the Respondent/RoC to defray the cost and expenses as well as towards filing any additional fee in filing the returns and documents which has been failed to be filed leading to its name being struck off from the Register of Companies 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.
- (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/Appellant Company in the register it will not entitle the directors of the Company whose names have been disqualified by virtue of provisions of Section 164 of the Companies

Act, 2013 by the Respondent/RoC to be automatically restored to directorship except in accordance with law.

- (e) An affidavit of compliance of the aforesaid directions shall be filed by the Appellant Company within a period of 2 months from the date of this order.
- (f) 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.

  
**(DR. V.K.SUBBURAJ)**  
**MEMBER (TECHNICAL)**

  
**(R. VARADHARAJAN)**  
**MEMBER (JUDICIAL)**

Deepak