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**NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
AHMEDABAD**

**Co. Appeal No. 53/252/NCLT/AHM/2017**

Coram:

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

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD  
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 20.12.2017**

Name of the Company:

Jaiprakash Khanchand Ashwani & Anr.  
(Suryaprakash Developers Pvt Ltd)  
V/s.

Registrar of Companies, Gujarat.

Section of the Companies Act:

Section 252 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 present for Appellants. None present for ROC.

Order pronounced in open court. Vide separate Sheets.



**MANORAMA KUMARI  
MEMBER JUDICIAL**

Dated this the 20th day of December, 2017.

**BEFORE NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH**

**Co. Appeal No. 53/252/NCLT/AHM/2017**

**In the matter of:**

M/s. Suryaprakash Developers Private Limited,  
Registered Office at  
33-34, Top Floor,  
Ascon City, City Light Road,  
Parle Point,  
Surat-395007  
Gujarat.

**In the matter between:**

1. Jaiprakash Khanchand Ashwani  
Director of  
M/s. Suryaprakash Developers  
Private Limited,  
Plot No. 2, Shakti Nagar Society,  
Opp: Holiday INN, Athwalines,  
Surat-395007, Gujarat.

2. Loknath Lurindaram Gambhir  
Director of  
M/s. Suryaprakash Developers  
Private Limited,  
10/2/A, Opp: Hari om Society,  
Near Rayan School,  
Behind Valentine Theatre,  
Piplod, Surat, Gujarat.

: Appellants.

Versus

Registrar of Companies,  
ROC Bhavan, Opp: Rupal Park Society,  
Behind Ankur Bus Stop,  
Naranpura,  
Ahmedabad-380013

: Respondent.

*A Kumar*

Order delivered on 20 December, 2017.

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

**Appearance:**

Mr. Bhairav Shukla, learned PCS for the Appellant.  
None present for ROC.

**ORDER**

1. This Appeal is filed by the above said Appellant Directors of M/s. Suryaprakash Developers Private Limited, seeking restoration of its name in the Register of Companies maintained by the Registrar of Companies, Gujarat, ['ROC' for short].

2. It is stated in the Appeal that the Company, M/s. Suryaprakash Developers Private Limited, was incorporated on 30.3.2005 as a Private Limited Company having CIN No. U45201GJ2005PTC045790, and has been carrying on business and operations till date.

3. The Appellants have stated that the Respondent ROC vide Public Notice dated 9<sup>th</sup> March, 2017 issued in Form No. STK-5 and 21<sup>st</sup> June, 2017 issued in Form No. STK-7 under sub-section (1) and (2) of Section 248 of the Companies Act, 2013 has struck off the name of the Company from the Register of Companies, Ahmedabad on the grounds stated in the said notice and published the same in the Gazette of India on 8<sup>th</sup> July, 2017. According to the Appellants, the Company failed to file Annual Accounts/Financial Statements and Annual Returns for the Financial Years 2011-12 to 2015-16; the Company has never received a copy of notice in prescribed Form STK-5 as per provisions of Section 248(1) and (4); and they derived a copy of the same from the MCA Portal.





4. According to the Appellants, the statutory documents were prepared and audited within the time limit and which were approved by the shareholders, but the same could not be filed due to communication gap between the management and the professional who has been entrusted with the duties to comply with necessary filing requirement, and the non-filing of the said documents was unintentional. The Appellants have given unsecured loan to the Company amounting to Rs. 1,39,85,000/-. According to the Appellants, there is a Civil Suit bearing Special Civil Suit No. 199 of 2010 which was filed in connection with the land owned by the Company as its business inventory in the Court of Principal Senior Civil Judge, Surat, on 12.4.2010 is pending for disposal. The Appellants submitted that the Company and stake-holders would have to suffer irreparable loss and the creditors will never get back their amount, and the Company would be prevented from pursuing its business activities, in case if the name of the Company is not restored in the Register of Companies by the Registrar of Companies.

4. The ROC filed Representation dated 28<sup>th</sup> November, 2017 through his Deputy Registrar of Companies, Gujarat, wherein he has denied the allegations made and contention raised in the Appeal, by stating that the Company failed to file any statutory returns, viz., Balance Sheets and other statutory returns with the office of the ROC since 31.3.2011 and hence its name was struck off.

5. The Appellant Company has filed copies of Annual Accounts for the Financial Years ended 31.3.2012; 31.3.2013; 31.3.2014; 31.3.2015; and 31.3.2016; copy of Rojkam of Special Civil Suit No. 199 of 2012; copy of Income Tax Return for the Assessment Years 2016-17 and 2015-16 and copies of other relevant documents.

6. This Appeal is filed by the Company under Section 252(1) of the Companies Act. The Appellants being Directors of the Company are entitled to file Appeal seeking restoration of the name

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of the Company. Therefore, this Appeal is maintainable. The Company, M/s. Suryaprakash Developers Private Limited was struck off on 21.6.2017 from the Register of Companies and the same was published in the Gazette of India. This Appeal was filed on 9<sup>th</sup> October, 2017. Therefore, this Appeal is within time.

7. From the material available on record, the only reason for striking off the name of the Appellant Company, M/s. Suryaprakash Developers Private Limited is that it failed to file statutory returns such as Balance sheets and other Returns since 31<sup>st</sup> March, 2011.

8. The material on record also goes to show that the Company is an ongoing concern and has been doing business.

9. Considering all the aforesaid aspects, this Tribunal is of the considered view that it is just and equitable to restore the name of the Company, M/s. Suryaprakash Developers Private Limited in the Register of Companies maintained by the ROC, Gujarat, and accordingly there shall be directions. The Company's name shall be restored upon the Appellant complying with the following conditions;

(i) The Appellants shall file all over due statutory returns with fee and additional fee as required under the Companies Act;

(ii) The Appellants 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 Appellants;

(iii) The Appellants shall also pay an amount of Rs. 10,000/- to the Ministry of Corporate Affairs 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 this order.

10. The Appeal stands disposed of accordingly.

Signature:



**Ms. Manorama Kumari, Member (J).**

Rmr.