

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, KOLKATA**

APPEAL CP No.635/KB/2017

In the matter of:

Section 252(1) (3) of the *of Companies Act, 2013*;

And

In the matter of

M/s. Om City Homes Private Limited(Struck Off)

Vs.

*The Registrar of Companies, Bihar, Ministry of
Corporate Affairs, Government of India*

..... Respondent

Date of pronouncement of the Order: 20-02-2018

**CORAM: Mr. V.P. Singh, Member(Judicial)
Mr. Jinan K.R., Member(Judicial)**

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For the Petitioner:

1. Shri Surendra Singh, Advocate

ORDER

Per Mr. Jinan K.R, Member (Judicial)

1. The Appellant has filed this appeal under Section 252(3) the Companies Act, 2013 against the order of the Registrar of Companies, Bihar, Patna, whereby the name of the company, Om City Homes Private Limited, was struck off from the register of Companies vide Notification No. ROC-Cum-OL/BR/248(5) STK-7/PUB dated 14-07-2017 issued by the Registrar of Companies, Bihar, Patna, under Section 248(5) of the Companies Act, 2013 and the Appellant Company has been dissolved on 21-06-2017.

2. A copy of the Notification ROC-Cum-OL/BR/248(5)/STK-7/PUB dated 14-07-2017 is enclosed with the Appeal and marked as enclosure A4. The authorized share capital of the Appellant Company is Rs. 5,00,000/- (Rupees five lacs) divided into 5000 equity shares of Rs.100/- each.

3. The subscribers of the memorandum of Appellant Company had paid their subscription within the prescribed period as contained under Clause -B of Sub-section (1) of Section 248 of the Companies Act, 2013 and the prescribed Form thereof filed with the Registrar of Companies, Bihar, Patna within the prescribed time

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4. There are two Directors of the Appellant Company.

5. The Appellant Company stated in the appeal that the Appellant Company commenced its business since it was incorporated on 19-05-2009 and had regularly filed its statutory returns i.e. the Balance Sheet, Profit and Loss Accounts, including the Annual Returns up to the Financial year ending 31-03-2012 but owing to some internal problems and due to lack of fund, the statutory returns of the Appellant Company after 31-03-2012 could not be filed before the Registrar of Companies, Bihar, Patna and, therefore, the appellant company could not adhere to the provisions contained under Section 455 of the Companies Act, 2013.

6. However, the Appellant Company is still carrying on its business and the Balance sheets/Financial statements and the Annual Returns of the Appellant Company for the financial year 2012-2013, 2013-2014, 2014-2015, 2015-2016 and 2016-2017 were/ are ready to be filed with the additional fee twelve times more to the original fee under the provision laid down under Section 403(1) proviso 1 of the Companies Act, 2013, read with Clause B of Rule -12 of the Companies (Registration of Offices and Fees) Rules, 2014 in electronic mode through e-form - AOC-4 and the e-form -MGT-7.

7. The copies of the audited/prepared, Balance sheet for the years 2013 to 2017 and the copy of the Balance sheet for the year 2012 are enclosed with the Appeal and marked as enclosure - A6.

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8. It has further been stated in the Appeal that the Appellant Company had no knowledge about its name having been struck off from the register and the Appellant Company having been dissolved.

9. The Director of the Company, namely, Shri Jitendra Kumar When went to his Chartered Accountant to file the due balance sheet of the Appellant Company and the Chartered Accountant when searched the status of the Appellant Company on MCA OPirtak-21 on 11-009-2017, came to know that the name of the Appellant company has been struck off and the Appellant Company has been declared dissolved.

10. The Appellant Company made application dated 18-09-2017 to the Registrar of Companies, Bihar, Patna on 18-09-2017 to furnish copy of the Notification of striking off the name of the Appellant Company, which has not been provided to the Appellant Company.

11. The copy of the Notification, obtained from the MCA Portal is submitted with the Appeal as enclosure A4. The copy of the application dated 18-09-2017 is enclosed with the Appeal and marked as enclosure - A7.

12. It has been alleged by the Appellant Company that its name has been struck off and the Appellant Company has been declared dissolved under Section 248(5) of the Companies Act, 2013 without following the mandatory requirement provided under Section 248(5) of the Companies Act, 2013.

13. It has also been alleged that no notice under sub-section (1) of Section 248 of the Companies Act, 2013 was served upon the Appellant

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Company and its Directors before striking off the name of the Appellant Company. It has further been stated that the Appellant Company, at the time of striking off its name from the register of Companies, was carrying on its business and is still in operation. The aforesaid facts would be evident from the agreements dated 28-05-2017 and 23-08-2017 along with the bills dated 27-08-2017, 29-06-2017, 21-07-2017, 12-01-2017, 06-02-2017 and 21-03-2017 issued in favour of the Appellant Company.

14. The Statement of Bank account maintained by the Appellant Company is also testimony of the facts that the Appellant Company is still operational and carrying on its business. The GST invoice dated 31-08-2017 is also proof of the fact that the Appellant Company is still carrying on its business.

15. The copies of all the above said agreements, the statements of the Bank account of the Appellant Company and the copy of GST invoice dated 31-08-2017 are enclosed with the Appeal and marked as enclosure A-8.

16. In view of what has been stated by the Appellant Company as above, the Appellant Company has prayed for restoration of its name in the register of Companies, Bihar, Patna which was struck off by the Registrar of Companies, Bihar, Patna vide its Notification No. ROC-Cum-OL/BR/248(5)/STK-7/PUB dated 14-07-2017.

17. The Registrar of Companies, Bihar, Patna has submitted his report dated 19-01-2018 wherein it has been, inter alia, stated that:

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- (i) The Appellant Company after incorporation on 19-05-2009, filed its Balance sheet along with profit and loss account and Annual Returns up to the financial year ending as on 31-03-2012, but thereafter the Appellant Company defaulted. The plea taken by the Appellant Company that owing to some internal problems and due to lack of fund the statutory returns of the Appellant Company after 31-03-2012 could not be filed, is evasive and unacceptable.
- (ii) The Appellant Company when failed to file its Annual Return along with the Balance sheets and profit and loss accounts before the answering respondent, notice dated 20-03-2017 was issued to the Appellant company in consonance with Section 248 of the Companies Act, 2013 requesting the Appellant Company to file its return within the mandatory period of 30 days. The Appellant Company when failed to file its return to reply to the notice dated 20-03-2017, the second notice in form STK-5 dated 26-04-2017 was issued.
- (iii) The Appellant Company when failed to make any responses to the notices issued on 20-03-2017 and 26-04-2017, as mentioned herein above, the respondent had no option other than to issue notification bearing Reference No. ROC-Cum-OL/BR/248(5)/STK-7/PUB dated 14-07-2017 by which, name of the Appellant Company has been struck off from the register of Companies and the Appellant Company was dissolved. There is no infirmity in the order passed by the respondent. The notification dated 14-07-2017 is in consonance with the provisions contained under Section 248 of the Companies Act, 2013.
- (iv) However, the answering Respondent would have no objection if the name of Appellant Company is restored in the Register of

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Companies provided the Appellant Company fulfills the legal requirements such as filing its due Annual Returns along with Balance sheet as well as Profit and Loss Accounts with the additional fee as per the provisions contained under section 403 of the Companies Act, 2013. Further, any penalty as deemed fit by this Tribunal may also be imposed.

18. Heard the Ld. Counsel for the appellant and perused the records.

19. On a perusal of the report of the Registrar of Companies, Bihar, Patna, it appears that the name of the company was struck off vide Notification No. ROC-Cum-OL/BR/248(5)/STK-7/PUB dated 14-07-2017 after complying with the provision of Section 248 of the Companies Act, 2013, on account of the Company having failed to file Annual Return along with Balance sheets and profit and loss Accounts before the answering respondent, notice dated 20-03-2017 was issued to the Appellant Company in consonance with Section 248 of the Companies Act, 2013 requesting the Appellant Company to file its return within the mandatory period of 30 days. The Appellant Company when failed to file its return to reply to the notice dated 20-03-2017, the second notice in form STK-5 dated 26-04-2017 was issued. The Appellant Company, when failed to make any responses to the notices issued on 20-03-2017 and 26-04-2017, the respondent had no option other than to issue notification bearing Reference No. ROC-Cum-OL/BR/248(5)/STK-7/PUB dated 14-07-2017 by which the name of the Appellant Company has been struck off from the register of Companies and the Appellant Company was dissolved.

20. As per Section 248(5) of the Companies Act, 2013, at the expiry of the time mentioned in the notice, the Registrar may, unless cause to the contrary is shown by the Company, strike off the name of the Company

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from the register of the Companies, and shall publish notice thereof in the official gazette, and on publication in the official gazette of this notice, the Company shall stand dissolved.

21. No documents produced on the side of the appellant to prove that there was no default on the side of the appellant in respect of submissions of statutory returns and balance sheets. On the other hand it admits that due to internal problems appellant could not file its return. The contention that no statutory notice were received from the respondent before striking of the company is also unbelievable and unacceptable in the absence of supporting evidence in this regards. Therefore, the contention of ROC that there is no infirmity or illegality in respect of striking off the company is found true and correct.

22. On perusal of the appeal memorandum, it appears that the provision of Section 252 has been enforced vide Notification No. ROC-Cum-OL/BR/248(5)/STK-7/PUB dated 14-07-2017 and as such, the petition is well within the limitation under both the sub-sections (1) and (3) of Section 252 of the Companies Act, 2013.

23. The Ld. Counsel for the Petitioner submitted that the company is carrying on its normal business and it was in the habit of filing its statutory returns and owing to some internal problems and due to lack of fund, the statutory returns of the Appellant Company after 31-03-2012 could not be filed and it is neither deliberate nor intentional on the part of the Appellant company.

24. The Ld. Counsel further submits that the impugned action of the striking off the company would adversely affect on the company and the Appellant Company is ready to comply by filing annual return within the

stipulated time as granted by the Tribunal along with the required fees and prays for directing the respondent to restore the name of the company in the register of companies maintained by the respondent.

25. Nothing forthcoming to show that the Appellant company has filed its balance sheets since the financial year ending as on 31-03-2012. Even if the appellant approached the respondent, it was after striking off the name of the company from the register of Companies.

26. The Ld. Counsel for the appellant submits that the Appellant company is a going concern and carrying on business or in operation since the incorporation of the Company till date. According to him, upon the production of the balance sheets and annual returns for the period ended 31st March, 2016, which is duly certified by the statutory auditor, proves his said contention. According to the Ld. Counsel, upon production of the audited/prepared Balance sheet for the year 31-03-2012 and the balance sheets and annual returns sheet for the missing years 2013 to 2017, this Tribunal can be satisfied that the Company is carrying on business or in operation.

27. To see that the company is carrying on its business or in operation, the appellant produced the balance sheets, annual returns and the Director's Reports for the years 2013 to 2017. Reading the Director's Reports in the year ended 31st March, 2017, it is understood that the company is carrying on the business as Civil and military contractors and engineers and generating revenue and running in profit.

28. As per the Balance sheet, the rates of profits are the following:

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Sl. No.	For the year	Profit (in Rupees)
1	2011-2012	268=00
2	2012-2013	3,985=00
3	2013-2014	3,490=00
4	2014-2015	3,590=00
5	2015-2016	3,442=00
6	2016-2017	4,015=00

29. Looking into the profit and loss account and that the Company is generating revenue for all the financial years of which company failed to submit returns give rise an indication that company is carrying on business.

30. Thus, from the careful scrutiny of the Director's Report, statement of profit and loss, financial statement and balance sheet, it appears to us that the company is an ongoing concern.

31. At this point, it is important to note that in Purushottamdass and Another V. Registrar of Companies [(1986) 60 Comp. Case 154 Bom], the Hon'ble High Court of Bombay in an appeal filed under Section 560 of the old Act, has held that:

"The objects of Section 560(6) of the Companies Act is to give a chance to the company, its members and creditors to revive the company which has been struck off by the Registrar of Companies, within a period of 20 years, and to give them an opportunity of carrying on the business only after the company judge is satisfied that such restoration is necessary in the interests of justice. The company judge may be satisfied that either the company was carrying on its business or was in operation or otherwise, and it is, in the circumstances of the case, equitable and just to restore the company. It, however, does not mean that the rights and liabilities of the

company are lost during the interim period, inasmuch as Section 560(6) of the Companies Act provides that after an order of restoration is passed, it shall be deemed as if the company was never struck off from the register of companies. The section also provides the company judge with wide powers to put certain conditions or directions at the time of ordering the restoration".

32. This appeal came up for consideration under section 252(3) of the Companies Act, 2013. Similar power to the Company Tribunal under Section 560(b) of the Companies Act, 1956 is provided under section 252(3) of the Companies Act, 2013. If this Tribunal is satisfied that the company is in operation without doing any active business even then an order of restoration can be allowed, if interest of justice demands but upon certain conditions and directions. It is good to read section 252(3). It reads as follows:

"A Company, or any member or creditor or workman thereof feels aggrieved by the company having its name struck off from the register of companies, the Tribunal on an application made by the company, member, creditor or workman before the expiry of twenty years from the publication in the Official Gazette of the notice under sub-section(5) of section 248 may, if satisfied that the company was, at the time of its name being struck off, carrying on business or in operation or otherwise it is just that the name of the company be restored to the register of companies, order the name of the company to be restored to the register of companies, and the Tribunal may, by the order, give such other directions and make such provisions as deemed just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off from the register of companies".

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33. The above said discussion lead to a conclusion that the company is in operation, however, failed to submit statutory returns like Balance Sheets and Annual Returns since the financial year ended 31-03-2013.

34. The contention that there were some internal problems and lack of fund of the Company and after such problems were resolved, the Chartered Accountant of the Appellant Company when searched the status of the Appellant Company on MCA Portal - 21 on 11-09-2017, came to know that the name of the Appellant Company has been struck off and the Appellant Company has been declared dissolved, seems to be unbelievable in the absence of supporting evidence. Failure to file statutory returns for more than three years only give rise a legitimate inference that it was sleeping over its statutory obligations with out due care and caution. The default thus can be excused only on payment of cost. Awarding a cost of Rs. 75,000/- for compensating the lapses for non-filing of statutory returns and balance sheets for about five years is found fair and just in the peculiar nature and circumstances of the appeal in hand.

35. Being found that this appeal was filed in time and company was, at the time of its name being struck off, carrying on business, the petition is liable to be allowed in the interest of justice, equity and good conscience as held in the above cited decision but with cost as referred above.

36. In the result, by exercising the powers conferred on this Tribunal under Section 252 of the Companies Act, 2013, this [↓] appeal is allowed upon the following directions:

- (1) The Registrar of Companies, the respondent herein, is ordered to restore the original status of the Petitioner Company, as if the name of the company has not been struck off from the register of

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Companies with resultant and consequential actions like changing status of Company from 'Strike Off' to "Active"; to activate DIN Nos. of the Directors of the Appellant Company;

- (2) The Appellant company is directed to file all pending statutory document(s) including Annual Accounts and Annual returns for the financial years 2012-2013, 2013-2014, 2014-2015, 2015-2016 and for the year 2016-2017, along with prescribed fees/additional fee/fine as decided by the Registrar of Companies within 30 days from the date on which its name is restored on the Register of Companies by the Registrar of Companies, Bihar, Patna;
- (3) The Appellant Company is directed to ensure compliance of this order;
- (4) The restoration of the Appellant Company's name is also subject to the payment of cost of Rs. 75,000/- (Rupees Seventy Five Thousand only) through online payment in www.mca.gov.in under miscellaneous fee by mentioning particulars as "payment of cost for revival of company pursuant to orders of NCLT in Appeal CP No. 635/KB/2017";
- (5) The Appellant Company is permitted to deliver a certified copy of this order with the Registrar of Companies, Bihar, Patna, within thirty days of the receipt of this Order;
- (6) On such delivery and after duly complying with above directions, the Registrar of Companies, Bihar, Patna is directed to, on his Office name and seal, publish the order in the Official Gazette;

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(7) The impugned action of striking off of the name of the Appellant Company will not come in the way of the Registrar of Companies, Bihar, Patna to take appropriate actions in accordance with law, for any other violations/offences, if any, committed by the applicant company prior or during the striking off of the company.

37. Urgent photo stat certified copy of this Order, if applied for, be supplied to the parties upon compliance of all the requisite formalities.

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(V.P. Singh)
Member(Judicial)

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(Jinān K. R.)
Member (Judicial)