

Urvashi Infrastructure Limited vs Registrar Of Companies on 7 December, 2022

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) No. 28 of 2021

(Arising out of the 'Order' dated 04.01.2021, passed by the
'National Company Law Tribunal', New Delhi Bench (Court-II),
in Appeal No. 215 / 252 (ND) / 2020 under
Section 252 of the Companies Act, 2013)

In the matter of:

URVASHI Infrastructure Limited,
(CIN U24119DL1992PLC028863)

Having its Registered Office at:
C-9/35, Shop No. 2, 2nd Floor,
Sector-8, Rohini,
Delhi - 110085

Through its Director

Mrs. Deepa Kansal (DIN: 01934976)

..... Appellant

v

Registrar of Companies, Delhi & Haryana
4th Floor, IFCI Tower,
61, Nehru Place,
New Delhi - 110019

..... Respondent

Present:

For Appellant

: Mr. Chandra Shekhar Yadav, Mr. Shashank and
Ms. Simran Kumari, Advocates

For Respondent

: None

ORDER

(Virtual Mode) Justice M. Venugopal, Member (Judicial):

IA No. 339 of 2021 in Comp. App (AT) No. 28 of 2021:

Heard the Learned Counsel for the 'Petitioner / Appellant' in IA No. 339 of 2021 in
Comp. App (AT) No. 28 of 2021.

2. According to the Petitioner / Appellant in IA No. 339 of 2021 in Comp. App (AT) No. 28 of 2021, it seeks permission from this 'Tribunal', to file the 'Income Tax Returns', for the 'Assessment Years' 2017-18, 2018-19, 2019-20 and 2020-21', since these documents were not filed before the 'Tribunal', and hence the permission may be accorded by this 'Tribunal', to prove its case in the

instant Comp. App (AT) No. 28 of 2021.

3. Considering the fact that, according to the Petitioner / Appellant, the 'Income Tax Returns', mentioned supra, filed by it, are required to prove its case, this 'Tribunal', in furtherance of 'Substantial Cause of Justice', allows IA No. 339 of 2021 (filed by the 'Petitioner / Appellant' under Rule 11 of NCLAT Rules, 2016), to place on 'Record' the 'Additional Documents', since no prejudice will be caused to the Respondent on any score. No costs.

JUDGMENT (Virtual Mode) Justice M. Venugopal, Member (Judicial):

Company Appeal (AT) No. 28 of 2021:

Background:

4. The 'Appellant' / 'Company' (Appellant in Appeal No. 215 / 252 (ND) / 2020, has preferred the instant Company Appeal (AT) No. 28 of 2021, before this 'Tribunal', as an 'Affected Person', being dissatisfied with the 'impugned order' dated 04.01.2021, passed by the National Company Law Tribunal. New Delhi Bench, (Court II), in dismissing the 'Appeal'.

5. The 'National Company Law Tribunal', New Delhi Bench, (Court II), while passing the 'impugned order' dated 04.01.2021 in Appeal No. 215 / 252 (ND) / 2020, at Paragraph Nos. 11 to 14, had observed the following:

11. ``That the provisions pertaining to restoration of the name of the Company are provided in the Section 252(3) of the Companies Act, 2013, which, inter alia, includes that if a company is carrying out its business or in operation or otherwise it is just the name of the company be restored, this Tribunal can order the RoC to restore the name of the company in the Register of Companies.

12. That the Appellant Company failed to bring anything on record, which could indicate that the Appellant Company was either in operation or was doing any significant business at the time when its name was struck off from the Register of Companies by RoC.

13. In the current circumstances, it is worthwhile to refer to the Judgement of Hon'ble NCLAT in the matter of Alliance Commodities Private Limited Vs. Office of the Registrar of Companies, West Bengal, Company Appeal (AT) No. 20 of 2019:

``9. Section 252 (3) of the Companies Act, 2013 empowers the Tribunal to order restoration of a Company whose name has been struck off from the Register of Companies, if such company, any member or creditor or workman thereof feeling aggrieved by such striking off applies before the Tribunal seeking restoration of the struck off company to the Register of Companies before the expiry of twenty years from the publication in Official Gazette of notice under Section 248(5). The exercise

of such power is properly regulated and depends upon satisfaction of the Tribunal that the Company at the time of its name being struck off was carrying on business - 10 - Company Appeal (AT) No. 20 of 2019 or in operation or otherwise it is 'just' that the name of company be restored. We do not find ourselves persuaded to agree with the proposition canvassed by learned counsel for the Appellant that inspite of Appellant's inability to demonstrate that the Company was at the relevant time carrying on business or in operation, the Tribunal had vast powers to order restoration of Company on the ground ``or otherwise". This term ``or otherwise" has been judiciously used by the legislature to arm the Tribunal to order restoration of a struck off company within the permissible time limit to take care of situations where it would be just and fair to restore company in the interest of company and other stakeholders. Such instances can be innumerable. However, this term ``or otherwise" cannot be interpreted in a manner that makes room for arbitrary exercise of power by the Tribunal when there is specific finding that the Company has not been in operation or has not been carrying on business in consonance with the objects of the Company. A Shell Company or a Company having assets but advancing loans to sister concerns or corporate persons for siphoning of the funds, evading tax or indulging in unlawful business or not abiding by the statutory compliances cannot be allowed to invoke this expression ``or otherwise" which would be a travesty of justice besides defeating the very object of the Company"

14. In view of the above, this Bench is not inclined to interfere with the striking off action taken by the RoC against the Appellant Company under Section 248(5) of the Companies Act, 2013." and resultantly, dismissed the 'Appeal'.

6. According to the Learned Counsel for the Appellant, the 'Appellant' / 'Company', was incorporated under the Companies Act, 1956 on 01.06.1992 as 'Beriwal Chemicals Limited' (vide CIN :

U24119DL1992PLCo28863), as a 'Public Limited Company', by 'Shares' with the 'Registrar of Companies', Delhi and Haryana', having its Registered Office, situated at C-9/35/Shop No.2, 2nd Floor, Section - 8, Rohini, Delhi - 110085.

7. It is represented on behalf of the Appellant, that its 'name' was changed to 'Urvashi Infrastructure Limited', vide 'Certificate' dated 06.02.2008 and the objects of the 'Appellant' / 'Company' were changed, as per Certificate dated 04.12.2017, and that the 'Appellant' started pursuing infrastructure works as well. Furthermore, the 'Appellant', due to extreme slow down in the 'Real Estate Market', after completing the 'Real Estate Projects', in the year 2014-2015, continued to carry on its incidental works and continued to generate 'Revenue' and look after the proper 'Real Estate Project'. But, a lot of money, was stuck in the Debtor's of the 'Appellant', for which, the 'Appellant', has filed numerous legal proceedings and about eight cases are pending, before the various Courts, against the Debtors' of the Appellant, and they are pursued by the 'Appellant', and in fact, a sum of Rs.18,12,500/- was to

be recovered by the 'Appellant', from its Debtors'.

8. It is the version of the Appellant that it was a 'Compliant Company', in the past, but, due to the sudden demise of the son of the 'Director' (Smt. Kanta Kansal) in Feb'2018, the demise of another 'Director' of the 'Appellant' / 'Company' Viz. Shri. Raja Beriwal, on 17.09.2019 and also the elder son of Smt. Kanta Kansal on 13.01.2020, the Statutory Filings could not be properly followed.

9. The Learned Counsel for the Appellant points out that because of 'some inadvertence' on the party of the 'Consultant', also, who filed 'Annual Returns', but had not filed the 'Financial Statements'. Because of the emotional issues, that took place in the family of the 'Directors', there was laxity on their part, in following up the matter, with the 'Consultant', leading to non-filing of 'Financial Statements', for the period 2017-2018, 2018-2019, 2019-2020, 2020-2021 and the 'Annual Return' for the Financial Year 2018-2019. Under these circumstances, the 'striking off' the 'name' of the 'Appellant', according to the 'Appellant', is not warranted and unjustified one.

10. The 'Appellant' was issued with the 'Show Cause Notice', on 20.07.2019, by the 'Respondent / Registrar of Companies (Delhi)', as to why the 'name' of the 'Company' from the 'Register of Companies', be not removed. The 'Ministry of Corporate Affairs' (Office of Registrar of Companies), issued a 'Gazette Notification' dated 09.08.2019, Published Form No. STK-5, whereby the 'List of Companies', whose names were proposed to be 'removed' / 'strike off' were published and the Appellant's name appeared at Sl. No.8709. Through a Gazette Notification dated 29.10.2019, the 'Ministry of Corporate Affairs' (Registrar of Companies), published Form No. STK 7, whereby the 'List of Companies', whose names were 'Struck Off', were published and the Appellant's name appeared at Sl. No.7503.

11. It is the plea of the Appellant that it preferred an 'Appeal' bearing No. 215 / 252 (ND)/2020, before the 'Tribunal' and the same was Listed, on 04.03.2020, and because of the Learned Counsel for the 'Appellant', got stuck up in another case, the matter was adjourned to 01.04.2020 and in view of 'Covid-19 Pandemic', the matter was not heard and later, the case was fixed for 'Hearing', on 23.12.2020, by virtue of the 'Order' dated 25.11.2020, passed by the 'Tribunal'. In the interregnum, filed numerous documents, among other things, the Balance Sheets for the Financial Year 2017-2018, 2018-2019, 2019-2020 and 2020-2021, 'Income Tax Demand' / and 'Proof of Payment of Income Tax'.

12. According to the Appellant, it had filed 'Income Tax Returns', showing Income, Employees whose Salaries were regularly paid, 'Trade Debtors' from whom, it was to recover Rs.18,12,500/- and 'Legal Cases', are pending against them, before the 'Competent Law Courts', etc.

13. The Learned Counsel for the Appellant refers to the filing of 'Income Tax Returns', for the Assessment Years 2017-2018, 2018-2019, 2019-2020 and 2020-2021, showing the following Income:

Financial Year	Income (Rs.)	Turn Over as per Balance Sheet
2017-18	20,783/-	1028910/-
2018-19	7,889/-	850515/-
2019-20	11,364/-	575600/-
2020-21	31,340/-	2078600/-

14. The Learned Counsel for the Appellant submits that, as per 'Section 248 (1) (e) of the Companies Act, 2013', a duty is caused upon the 'Respondent / Registrar of Companies', to carry out the physical verification as per 'Section 12 (9) of the Act', to ascertain whether the 'Company', is 'not carrying on any business or operations'. However, the Respondent passed an 'Order', as per Section 248 (5) of the Companies Act, without advertng to Section 248 (1) (e) of the Act.

15. The prime plea of the 'Appellant' is that to recover a sum of Rs.18,12,500/- from its Debtors' and the recovery of the said sum, will enable the 'Appellant' to further its business activities and legal cases filed by the 'Appellant', against the Debtors' are pending, before the concerned Courts, it is just and proper for this 'Tribunal' to 'Order' for 'Restoration' of the 'name' of the 'Appellant', in the 'Register of Companies'. If the 'Appellant's name, is not 'Restored', then, the aforesaid cases will become a 'Futile' and 'Infructuous' one.

16. Advancing his argument, the Learned Counsel for the Appellant points out the Salaries of the Employees, paid through Banking Transactions and the same was reflected in their 'Books of Accounts' of the 'Appellant' for the Financial Years from 2015-16 to 2020-21.

17. The other vital reason ascribed on behalf of the Appellant is that because of the sudden demise of the son of the 'Director / Smt. Kanta Kansal', in Feb'2018, the death of another 'Director' of the 'Appellant / Company Mr. Raja Beriwal', on 17.09.2019, and also the elder son of Smt. Kanta Kansal on 13.01.2020, the Statutory Filing could not properly followed and their appears to be some inadvertence on the 'Party' of the Consultant, who filed 'Income Tax Returns', but had not filed the 'Financial Statements', for the Years 2017-18, 2018-19, 2019-20 and 2020-21 and the 'Annual Return' for the Financial year 2018-19. In these circumstances, the 'Striking

Off the `name' of the `Appellant' is unwarranted and unjustified.

18. Before the `Tribunal', the `Respondent / Registrar of Companies', took a plea that the action of `Striking Off' the `Appellant / Company', was legal and justified, as the `Company was not carrying on any Operations, for a period of two years, immediately preceding Financial Years (as indicated by non-filing of the `Financial Statements' of the `Company' for two or more years). Further, the `Company' had not obtained the `Status of a Dormant Company', as per `Section 455 of the Companies Act, 2013'.

19. Apart from the above, in the Respondent's Office, the `Appellant' / `Company', had submitted its `Annual Return' and `Balance Sheet', for the `Financial Year', ended on 31.03.2018 and 31.03.2016, respectively and later the `Appellant / Company', had not filed any documents with the Respondent. A `Public Notice', in Form STK-5 was issued.

20. The stand of the Respondent before the `Tribunal', was that the total demand raised by the `Income Tax Department', for the Assessment Years, from 2008-2009 to 2017-2018 is of Rs.7,740/- which was paid by the `Appellant / Company', on 12.12.2020 and 14.12.2020, namely `after the date of `Striking Off' its `name', by the `Respondent / RoC'.

21. In this connection, the contention of the `Respondent / RoC', before the `Tribunal', was that, the payment of the aforesaid demand cannot be considered as a basis to justify the need of `Restoration' of the `name' of the `Appellant / Company' in the `Register' of the `Registrar of Companies', as by so doing, the `Appellant' had discharged its obligation by paying the aforesaid `Demand', in terms of the requirement of Section 250 of the Companies Act, 2013.

22. The Respondent, also took a plea before the `Tribunal' that as per their `Records', neither the `Appellant / Company' was carrying out any operations for a period of two immediately preceding Financial years nor have any `Immovable Property' in its `name' and further no `just and equitable ground' was made out by the `Appellant / Company', for its `Revival'.

Birds Eye View of Citations:

23. In the decision in M.A. Panjwani v Registrar of Companies and Ors. (2015) 124 CLA 109 (Delhi), the Hon'ble High Court of Delhi at paragraph 16, made the following observation:

16. ``It was submitted on behalf of the Registrar of Companies that in striking off the name of the Company, the procedure prescribed in Section 560 of the Aft was followed. That may be so, Sub-section 6 of Section 560 gives power to the company

court to order restoration of the name of the company if it finds that such of course was 'just'. The fact that the RoC did follow the due procedure prescribed by law while striking off the name cannot, therefore, be an answer to a petition filed on the ground that it would be 'just' to restore the name of the company."

24. In the Division Bench decision of Madras High Court in M.A. Rahim & Anr. v. Sayri Bai, reported in MANU/TN/O218/1973, it is held that the word 'just' connotes reasonableness and something confirming to 'Rectitude' and 'Justice', something 'Equitable and Fair'.

25. In the decision in Kesinga Paper Mills Pvt. Ltd. v Ministry of Corporate Affairs, 2010 (101) SCL 321 (Del.), the Hon'ble High Court of Delhi at paragraph 10, had observed as follows:

"10. Further, when a litigation is pending by or against a company, it is only proper that its name be restored to the Register to enable the matter to be carried to its conclusion, as has been held by this Court in M/s. Indian Explosives Ltd. v Registrar of Companies, CP. No. 185/2008, decided on 21st April, 2010."

26. In the decision in 'Sidhant Garg and Anr. v 'Registrar of Companies and Ors.', in (2012) 171 Comp. Cas. 326, it is observed and held 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.'

27. In the Judgment of the 'Appellate Tribunal' dated 31.01.2019, in the matter of Lakshmi Rattan Cotton Mills Company Ltd. through its Director Sashank Gupta, Kanpur, Uttarpradesh v Union of India, through Secretary, Ministry of Corporate Affairs, (vide Comp. App. (AT) 239 of 2018), wherein at paragraphs 11 and 12, it is observed as under:

11. "Looking to the disputes pending in the High Court, according to us, it would be appropriate to restore the name of the Company to the Registrar of Companies leaving all questions open for the Appellant and Respondents to dispute in the Writ Petition for final adjudication by the Hon'ble High Court. Striking off the name of the Company would create difficulties for the Appellant to pursue its remedies before the High Court and in the facts of the matter, when litigation was pending the name of the Company should not have been struck off.

12. The particulars show that in spite of Notices the Company did not respond and we do not find fault with RoC when the name was struck off because the Appellant admittedly had not responded to the Notices. However, in the facts of the matter, we find it just under Section 252 (3) of the Companies Act, that the name of Company

should be restored, but Appellant should bear costs payable to RoC."

and in fact, a direction was given to restore the name of the 'Appellant company' in the Registrar of Companies' to its original status subject to the 'Appellant'/Company depositing costs and expenses of Rs.1 lakh with the Registrar of Companies along with the certified copy of the order within one month of passing the order. Further, a direction was issued to the appellant/Company that within three months of date of passing of the order, it shall file its 'returns' due and pending financial Statements, Annual Returns and Documents with the Registrar of Companies and comply with the requirements of the Companies Act. In reality, the 'Impugned Order' dated 30.05.2018 passed by the National Company Law Tribunal, Allahabad Bench in CP/23/2012 was quashed."

28. In the Judgment dated 23.06.2020 of this 'Appellate Tribunal' (3 Member Bench) in Company Appeal (AT) No. 40 of 2020, between M/s. Leena D. Bagwe v. The Registrar of Companies, Mumbai, it was mentioned that through the 'impugned order', passed by the 'National Company Law Tribunal', Mumbai Bench, Mumbai) in CP No.1461/252/MB/2019, the 'Appellant' was incorporated on 17.12.1991 and was 'Struck Off' on 04.12.2018, for non filing of 'Annual Returns', since 'Incorporation' and through the Para 10 of the 'impugned order', the 'Restoration' of 'name' of the 'Company', was allowed, subject to payment of Cost of Rs.7,00,000/- and based on the facts of the case in the 'Appeal', in place of Rs.7,00,000/- towards 'Costs', it was to be read as 'Rs.1,50,000/-'. Further, it was ordered by this 'Tribunal', that by the disposal of the Comp. App (AT) No. 40 of 2020, the same would not come in the way of 'Registrar of Companies', Mumbai to recover other 'Statutory' penalties / dues / filings, liable to be paid by the 'Appellant'. Foreign Decision:

29. In the decision in *Conti v Uebersee Bank AG*, (2000) BCC 172 (Scotland), it is observed as under:

"Where a company has been struck off the register at its own request, the officer of the company who had been instrumental in seeking such a striking off had sufficient locus-standi to apply for restoration. Clearly that officer could not claim that he was aggrieved at the time of striking off but a subsequent feeling of grievance would give him locus-standi. The language of the section points to a sense of grievance at the time of application to restore and not at the date of the dissolution."

30. In *Re Priceland Ltd. Waltham Foresh London Borough Council v Registrar of Companies and Ors.* (1997) 1 BCLC 467, 476, 477 (Ch. D) (Companies Court), it is observed and held as under:

".....In other words, the exercise of discretion only arises after the court has been satisfied that (a) the company was at the time of striking off carrying on business or in operation, or (b) otherwise that it is just that the company be restored. The first of these amounts to the court being satisfied that the registrars reasonable beliefs which were the basis for the original order striking the company off, were not in fact correct. The second means that, prima facie, the court has been persuaded that it is just to restore. In either case it seems to me that, absent special circumstances, restoration should follow. Exercising the discretion against restoration should be the exception,

not the rule," (Page 476) Once the court has acquired jurisdiction on the basis that the new applicants interests make restoration just it would be harsh indeed to refuse the relief sought because some other third party may be inconvenienced by it. These considerations lead me to the view that the court should be very wary of refusing restoration so as to penalize a particular applicant or in a possibly futile attempt to safeguard the special interests of a single or limited class of affected persons. It would need a strong case to justify a refusal on these grounds.....(Page 477) (emphasis supplied)." Member:

31. This 'Tribunal', significantly points out the decision in Bayswater Trading Company Ltd. in Re (1970) 40 Comp Cas 1196 (Ch. D), wherein, it is observed that the word 'any Member' in Section 252 (3) of the Companies Act, 2013, must be construed, so as to extend, to the 'Personal Representative' of the 'Deceased Member', although, not on the 'Register' of 'Shareholders'.

Creditor:

32. An 'Individual', who lay an 'unliquidated Claim', is a 'Creditor', for the purpose of Section 252 (3) of the Companies Act, 2013. Sec. 248 of the Companies Act, 2013:

33. The words 'Reasonable Cause to Believe', occurring in Section 248(1) of the Companies Act, 2013, suggest that the 'Belief', is to be 'honest' and 'prudent' person, based on reasonable grounds to form an 'Opinion', for taking 'action'.

34. The power to 'Strike Off' the 'name' of the 'Company', can be exercised, if the 'Registrar', had the 'Reasonable Cause to Believe', that the 'Company' was not carrying on 'Business' or 'was not in Operation'. Petition by Registrar:

35. Section 252 (1) of the Companies Act, 2013, enjoins that, if the 'Registrar', is satisfied that the 'name' of the 'Company' was 'Struck Off', from the 'Register of Companies', either (i) Inadvertently or (ii) on the basis of an 'incorrect information', furnished by the 'Company' or its 'Directors', which requires 'Restoration' in the 'Register of Companies', he may within three years from the date of passing of the order, dissolving the Company under Section 248 of the Companies Act, 2013, file an 'Application', before the 'Tribunal', seeking 'Restoration of name of the Company'.

No 'Extinguishment':

36. The 'Right' to pray for 'Restoration' of a 'name' of the 'Company', to the 'Register of Companies', maintained by the 'Registrar of Companies', is not wiped out as long as the 'period of 20 years had not lapsed', as opined by this 'Tribunal'.

Power of Tribunal:

37. The words figuring in 'or otherwise', in Section 252 (3) of the Companies Act denotes that, even when the 'Company' was not carrying on any 'Business' or was not in 'Operation', at the time of

`Striking Off', the `Tribunal' has the `Choice' to `Order `Restoration of a Company's name in the Register of Companies', if it appears to it, to be `Otherwise Just'.

Dormant Company:

38. In `Law', a `Company', is entitled to `Apply' for obtaining the character of a `Dormant Company', by passing a `Special Resolution' at the General Meeting of the Company or by securing the `Consent' of `Shareholders', holding at least 3/4th of the `Shares' in `Value'. Dissolution:

39. From the date of `Dissolution' of a company, the `Certificate of Incorporation given to the company', is deemed to be `Cancelled', from the `Date of Dissolution'. A `Dissolved Company', is not to carry on its `Business Operations', bearing in mind the `Memorandum of Articles of Association' or with its `Objects' Clause.

Filing of Statutory Return:

40. Even a `Defunct Company', similar to that of every other Company is `Obligated' (in `Law'), as per Section 92 of the ingredients of Companies Act, 2013, to file the `Statutory Annual Returns', till it is wound up or till such time, the Company is `Struck Off' by the `Registrar', as per Section 248 of the Companies Act, 2013. Filing of Appeal:

41. If a `Company' or any `Member' or `Creditor' feels affected, they are competent to prefer an `Appeal', against the `Order' of `Registrar of Companies', prior to the lapse of 20 years, from the date of `Publication of Order', in the `Official Gazette', as per Section 252 (3) of the Companies, 2013.

42. Section 251 (1) of the Act, 2013, exhibits that `any person' Aggrieved by the `Order' of a `Registrar', notifying a `Company' as `Dissolved', under Section 248 of the Companies Act, 2013, is empowered to file an `Appeal', before the `Tribunal' (`National Company Law Tribunal').

No Power to Levy Penalty:

43. While `Restoring', a `Company', to the `Register of Companies', the `Court' has no `Jurisdiction', to fasten `any Penalty' for the `Defaults', under the act, but may impose `costs', as condition of `Restoration', as per decision in the matter of 'Re Moses and Cohens Ltd. 1957 3 All England Reporter 425.

Appraisal:

44. In the instant case, according to the `Appellant', because of slow down in the Real Estate market after completing its Real Estate Projects in 2014-15, the `Appellant' / `Company', continued to do its incidental works and continue to generate `Revenue' and to look after the proper `Real Estate Project', but lot of money was stuck in the hands of Appellant's Debtors', for which, the `Appellant' / `Company', initiated proceedings and `eight criminal cases' (under Section 138 of the N I Act, 1881)

are pending (before the various `Metropolitan Magistrate Courts'), against its `Debtors', (ranging from Rs.1,00,000/-, Rs.15,000/-, Rs.3,00,000/-, Rs.1,15,000/-, Rs.9,00,000/-, Rs.3,00,000/-, Rs.60,000/- and Rs.22,500/- respectively), and that apart, is to recover approximately Rs.18,12,500/- from its `Debtors', in respect of sums.

45. According to the Appellant, its Bank Statements shows that regular transactions and payment of Salaries, Wages, Expenses, etc. and in fact, a `Discretion', is vested in the `Tribunal', to `Restore' the `name' of the `Company', to the `Register of Companies', if it is satisfied that `the Company', was at that time of its `name' being `Struck Off', carrying on `Business' or in `Operations' or `Otherwise', it is just that the `name' of the `Company' be `Restored' to the `Register of Companies' and `Order' the `name' of the `Company' to be `Restored'.

46. The `Appellant / Company' in the instant `Appeal' has come out with a plea that in the event of `Revival of the Company' and the `Restoration of `name' of the Company', in the `Register', maintained by the `Respondent', it shall file `all Outstanding Statutory Documents', Viz. the `Financial Statements' for the `Financial Years' from 2016-17, 2017- 18 and the `Financial Statement' and `Annual Return' 2018-19, along with the Filing Fees and the Additional Fee, as applicable on the `Date of Actual Filing', and the `Certified copy of the Order of Tribunal', for the `Restoration of `name' of the `Company', to the `Register', maintained by the Respondent.

47. At this juncture, this `Tribunal' refers to the ordering of the Notice by the Hon'ble Supreme Court of India, in the matter of R. Narayanasamy v. Registrar of Companies, Tamil Nadu on 22.11.2021 (vide Civil Appeal No. 6803 - 6805 of 2021) and the same is pending (tentatively to be `Listed', on 06.01.2023).

48. Be that as it may, on a careful consideration of the contentions advanced on side of the `Appellant' / `Company', this `Tribunal', taking out of the fact that the `Appellant' / `Company' has initiated various proceedings before the Criminal Courts (8 in number) against its `Debtors', and is to recover approximately Rs.18,12,500/- from its `Debtors' and bearing in mind of the prime fact, `Right' to seek the `name' of the Company' (to be entered, in the `Register of Companies'), is not `Lost' or `Extinguished', as long as 20 years had not expired and apart from these, the `Appellant' / `Company', in the instant `Appeal', had unequivocally averred that in the event of `Revival' of the `Company' and `Restoration' of the `Company's name' in the `Register', maintained by the `Respondent', it shall file all `Statutory Documents' Viz. `Financial Statements' from 2016-17, 2017-18 and Financial Statement' and `Annual Return' for 2018-19 along with Filing Fees and the Additional Fees, etc., in all `Justness', `Fairness', `Equitableness' and `Reasonableness', by exercise of `sound discretion', deems it `Prudent, Just and Proper', to `Restore' the `name' of the `Appellant' / `Company', and that `Laches' / `Omissions' / `Lapses' (`Failures'), on the part of the `Appellant / Company's management, in not submitting the `filing of `Annual Returns' and `Financial Statements', in time, can be saddled with a `Levy' of `Costs', to prevent an `Aberration of Justice', and to promote `Substantial Cause of Justice', otherwise, it will cause `Irreparable Harm / Hardship', `Inconvenience' and serious `Prejudice' to the `Appellant' / `Company', as opined by this `Tribunal'. However, the contrary view, arrived at by the `National Company Law Tribunal', New Delhi Bench (Court II) in the `impugned order' dated 04.01.2021 in Appeal No. 215 / 252 (ND)

/ 2020, is an 'incorrect' and 'unsustainable' one in 'Law'. Viewed from that angle, the instant 'Appeal' succeeds. Result:

49. In fine, the instant Company Appeal (AT) No. 28 of 2021 is allowed. No costs. The impugned order dated 04.01.2021 in Appeal No. 215 / 252 (ND) / 2020 (filed under Section 252 of the Companies Act, 2013), passed by the 'National Company Law Tribunal', New Delhi Bench (Court II), is set aside by this 'Appellate Tribunal', for the reasons assigned in this 'Appeal'. The 'Notice of 'Striking Off' and 'Dissolution' in Form No. STK-7 dated 29.10.2019, where the 'name' of the 'Appellant' / Company', appearing at Serial No. 7503, is set aside.

50. Before parting with the case, this 'Tribunal', pertinently points out that the 'Restoration' of the 'name' of the 'Appellant' / 'Company', is subject to its filing of all outstanding documents required by Law and completion of all 'Statutory' formalities including payment of any late fee (for the outstanding period) or any other 'charges' / 'prescribed fee', which are leviable by the 'Respondent' for late filing of 'Statutory Returns' and also on payment of cost of Rs.60,000/- (Rupees Sixty Thousand only), to be paid to the 'Prime Minister Relief Fund', within two weeks' from today, and to produce the receipt for verification, before the 'Respondent'. The 'name' of the 'Appellant Company', shall then, as a resultant effect, shall stand restored to the 'Register of the Registrar of Companies', as if the 'name' of the Company' was not 'Struck Off', in accordance with Section 248 (5) of the Companies Act, 2013.

Before parting with the case, this 'Tribunal' makes it lucidly quite clear, that in future, the 'Appellant' / 'Company', is to act with great 'Care', 'Caution' and with 'Utmost Circumspection', in regard to the 'Statutory Compliances', as per 'Law', 'Rules' and 'Regulations'.

[Justice M. Venugopal] Member (Judicial) [Dr. Ashok Kumar Mishra] Member (Technical)
07/12/2022 SR / GC