IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ

CP No.61/ALD/2023

(An application/petition under Section 252(3) treated as an appeal filed under Section 252(1) of the Companies Act, 2013).

IN THE MATTER OF:

Ashtabhuja Infra Developers Private Limited

Having its Regd. Office at
R/o-538 GHA/64A, Daliganj Crossing, Bansal Kitchen House, Sitapur Road, Nirala Nagar, Lucknow, Uttar Pradesh-226020

.........Appellant No.1

Through its Director
Neeraj Rastogi

S/o Shri Kishan Chand Rastogi
R/o-538 GHA/64A, Daliganj Crossing, Bansal Kitchen House, Sitapur Road, Nirala Nagar, Uttar Pradesh-226020

......Appellant No. 2

VERSUS

The Registrar of Companies, Uttar Pradesh

37/17, Westcottt Buidling

The Mall, Kanpur-208001, Uttar Pradesh

..... Respondent

Order pronounced on: 11th October, 2024

Coram:

Mr. Praveen Gupta	:	Member (Judicial)
Mr. Ashish Verma	:	Member (Technical)

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Appearances:

Sh. Anurup Dutta, Adv.	: For the Petitioner & Applicant in CA No.23/2024
Sh. Krishna Dev Vyas, Adv.	: For the ROC
Sh. Krishna Agarwal, Sr. S.C.	: For the I.T. Deptt.

ORDER

1. This Appeal has been filed on 23.06.2023 by Mr. Neeraj Rastogi (hereinafter referred as "Appellant"), Director of Ashtabhuja Infra Developers Private Limited under Section 252(3) of the Companies Act, 2013, (hereinafter referred as the Act) praying for restoration of the Company's name i.e. Ashtabhuja Infra Developers Private Limited in the Register of Companies maintained by Registrar of Companies, Uttar Pradesh (hereinafter referred as "ROC/Respondent"). Later, a Delay Condonation/Supplementary Affidavit was filed by Appellant on 01.04.2024 to treat the present petition u/s 252(1) instead of 252(3).

2. Ashtabhuja Infra Developers Private Limited (hereinafter called as 'Company') was incorporated on 11.04.2013 under the Companies Act, 2013 bearing CIN: U70102UP2013PTC056120. The registered office of the

Company is at 538 GHA/64A, Daliganj Crossing, Bansal Kitchen House, Sitapur Road, Nirala Nagar, Lucknow-226020.

3. The Company is engaged in the business of real estate development and construction as owners, builders, developers, and civil contractors for residential, commercial, and industrial buildings and other civil or infrastructure works. They are also engaged in managing, leasing, and mortgaging various properties commercial and residential properties. Additionally, they are also engaged in land and property dealing, including the purchase, sale, decoration, and development of residential, commercial, agricultural, and industrial plots, acting as agents or on a commission basis for both company-owned and third-party properties.

4. The Authorised Share Capital of the Company is 50,000 Equity Shares of Rs. 10/- each amounting to Rs. 5,00,000/-and Issued, Subscribed and Paid-up Share Capital 50,000 Equity Shares of Rs.10/- each fully paid amounting to Rs. 5,00,000/-.

5. The Appellant submitted that the name of the company has been struck off by the ROC/Respondent vide order/notification dated 28.08.2018 because of default in complying with the statutory norms such as failure to file Financial Statements and Annual Returns since incorporation. Consequently, the Company's name has been struck off by the Respondent from its Register of Companies pursuant to Section 248(1) and 248(5) of the Act. It was subsequently published in the Official Gazette of India dated 1-7 September, 2018, declaring the applicant company as being dissolved vide entry no. 916. However, the Appellant contends that the Company and its directors did not receive any notice and therefore, were unaware of it. Consequently, due to lack of cooperation with the hired professional and unavoidable circumstances due to pandemic, they could not file the documents within time, leading to the removal of the Company's name from the Register of Companies on 28.08.2018 and its subsequent dissolution.

6. As stated in the Appeal, the Company has been an going concern since its incorporation and plans to expand its operations further and in case of need of further investment, it is planning to invite funds by tapping private placement channel or by raising institutional finance. The Appellant submits that the annual turnover of the Appellant Company, as per the Balance Sheet, for the Financial Year, 2013-14, 2014-15, 2015-16, 2016-17, 2017-18, 2018-19, 2019-20, 2020-21 and 2021-2022 were Rs.60,19,000/-, Rs. 4,08,000/-, Rs. 11,17,000/-, Rs. 0/-, Rs. 0/-, Rs. 5,50,000/, Rs. 16,00,000/-, Rs. 12,00,000/- and Rs. 0/- respectively. The Balance Sheet and Proft & Loss A/c for the abovementioned Financial Years, have been annexed as Annexure 8 with the Appeal. The Company also have Cash and Bank Balances of Rs. 27,956.42/- and Inventories of Rs. 54,51,000/- Moreover, there is Long Term Loans and Advances of Rs. 3,85,000/- as per the last balance sheet of Financial Year ending 31st March, 2022 showing in the Asset side and as per the Bank Statements, it can be ascertained from the number of transactions that the company is a running company.

7. In view of the facts and circumstances of the case as explained above, the Appellant Company has prayed to pass appropriate order to restore the name of the Company in the Register of Companies maintained by the office of the Registrar of Companies.

8. After considering the above appeal, notices were issued to the ROC and the Income Tax Department, calling for their reports to satisfy ourselves whether restoration of the name of the company would be in the interest of justice and in the public interest and appellant are genuinely interested in running the Company after its restoration and to ascertain whether removal of the name of the Company is justified or not in view of the grounds on which such order was passed by the ROC.

9. The ROC/Respondent has filed reply stating that the name of the Appellant Company was struck off from the register of companies on account of default in statutory compliances by not filing statutory documents i.e. Balance Sheet and Annual Returns since incorporation in contravention to Section(s) 92/137 of the Companies Act 2013. Despite being given fair opportunity of being heard by way of show cause notice, the Company and its directors failed in fulfilling their mandatory duty of filing the statutory returns of the Company. However, the Respondent further states that the matter may be decided on merits subject to assurance of the company to file all the pending financial statements along with the annual accounts with the office of the ROC through MCA portal and heavy fine may be imposed on the company and its directors to ensure that the company becomes more diligent in timely compliance of the Companies Act, 2013 in future.

10. The Income Tax Department has filed its reply/report, stating that during the enquiry conducted by this office it was noticed that there was board in the name of company M/s Ashtabhuja Infra Developers Pvt. Ltd. found at the address- H.No. 538, GHA/64A, Daliganj Crossing, Bansal Kitchen House, Sitapur Road, Nirala Nagar, Lucknow in the name of the applicant M/s Ashtabhuja Infra Developers Pvt. Ltd.at the time of the enquiry. The director informed during the enquiry that the said company is having office at said address and furnished copy of rent agreement between owner of the house and the said company M/s Ashtabhuja Infra Developers Pvt. Ltd. On

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enquiring about the workers in the company, it is noticed that there were two workers employed/under the applicant company, M/s Ashtabhuja Infra Developers Pvt. Ltd and therefore the Company was found to be exist and maintaining its office at the said address.

11. The Appellant filed a Rejoinder affidavit on 16.11.2023 and submitted that the registered office address of the Appellant Company mentioned above is located at the same address, as a new address was allotted and alternatively used by the Municipal Corporation but the old address which is being used by the appellants is the one which is easily recognizable by each and every one for communication purposes or otherwise to locate. The new address allotted by the Municipal Corporation is 474A/224, Brahma Nagar, Triveni Nagar, Lucknow-226020 and the old or currently in use address is 538 GHA 64A, Daliganj Crossing, Bansal Kitchen House, Sitapur Road, Nirala Nagar, Lucknow-226020. A copy of House Tax Bill has been annexed as Annexure no.1 with the rejoinder in support of the new address.

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12. The Ld. Counsel appearing on behalf of ROC submitted during the course of hearing of this appeal that the company was struck off on 28.08.2018 and the present appeal was filed on 23.06.2023. The Appellant therefore, filed a condonation of delay/supplementary affidavit bearing CA No. 23/2024 on 01.04.2024 and submitted that the case is covered by the order of the Hon'ble Supreme Court dated 10.01.2022 for the purpose of exclusion of the COVID-19 period. The present appeal therefore falls within the limitation period which in this case would expire on 12.02.2024 and therefore the delay was condoned vide order dated 03.10.2024.

13. Considering the facts and circumstances and response from the concerned statutory authorities connected with the functioning of the companies as discussed in aforesaid paras, we find that that the Appellant Company has been carrying on the business and also filing return of income. Though annual returns along with financial statements have not been filed with the ROC since incorporation but all the financial statements since the incorporation of the Company have been filed with the Appeal and it has been undertaken by the Company that it would file all the pending annual returns and financial statements after its name is restored. Even ROC in his report, has asked for assurance from the Company to file all the pending annual returns and financial statements subject to payment of heavy fine in case, the appeal for restoration of the name of the Company is allowed. In order to show that the company is actively involved in carrying out its business, copies of bank statements of the Company as well as Balance Sheet and Profit & Loss a/c from the FY 2013 to 2022 have been filed alongwith Appeal. As the company has been found to be having required resources for carrying on the business and it has been carrying on the business at the time when its name was struck off, and also reported by the Income Tax Department that it would be in the interest of revenue if the name of the Company is restored, we find that non-filing of annual returns alongwith financial statements, is only technical in nature for which the Appellant has given undertaking to fulfil these requirements as per the Companies Act, 2013 and

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the Income Tax Act, 1961 as well, after its name is restored.

14. Therefore, we allow the instant appeal to the extent of directing the ROC, Uttar Pradesh, Kanpur to restore the name of the Appellant Company on the Register of Companies 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, changing the status of the Appellant Company from "**struck off**" to "**active**" and take such further action against the Appellant Company in accordance with the statutory provisions.

15. Taking into account the report of the ROC as discussed in para 9, the restoration of the Company's name will be subject to the payment of the cost of Rs. 25,000/- through online payment in *www.mca.gov.in* under the head "*miscellaneous fees*" by mentioning particular as "*Payment of cost for restoration of the company pursuant to orders in CP No.61/ALD/2023*" and also to make payment of Rs. 25,000/- to the Prime Minister National Relief Fund.

16. This Petition/Appeal is disposed of on the terms directed above. The ROC shall give effect to this order only after

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perusal of the compliance report of the cost imposed. After due compliance with the above directions, the ROC, Uttar Pradesh, Kanpur shall publish the order for restoration of the name of the company in the Official Gazette under its office name and seal. The Company is directed to file all the statutory documents including Annual Accounts and Annual Returns along with the prescribed fees and additional fees as ordered by the ROC, Uttar Pradesh, Kanpur as applicable under the Companies Act, 2013 within 45 days from the date on which its name is restored on the register of companies maintained by the Registrar of Companies, Uttar Pradesh, Kanpur. They shall also fulfil all the other relevant statutory compliances, such as under the Companies Act, 2013 and the Income Tax Act, 1961, etc. This order is only confined to the violations, which ultimately led to the impugned action of striking off the name of the Company, and it will not come in the way of the Registrar of the Companies, Uttar Pradesh or any other concerned Government Authority to take appropriate action(s) in accordance with law, for any other violations/offences, if any, committed by the Appellant

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Company prior to or during the period the name of the Company remained struck off.

17. The Registry is directed to send copies of the order forthwith through e-mail to all the parties in the matter.

18. The appellant company is directed to deliver a certified copy of this order with ROC, Uttar Pradesh, Kanpur within 30 days of the receipt of the order.

19. Certified copy of the order be issued upon making an application by any concerned party with all requisite formalities.

20. Company Petition No.61/ALD/2023 is allowed and stands disposed off accordingly.

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(Ashish Verma)	**(Praveen Gupta)**
Member (Technical)	**Member (Judicial)**

Date: 11th October, 2024