

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, PRINCIPAL  
BENCH, NEW DELHI**

**Company Appeal (AT) No. 47 of 2021**

**IN THE MATTER OF:**

**M/s AVS Enterprises Pvt. Ltd.**

**...Appellant**

House No.601, VPO Rajokri  
Near Air Force Camp,  
Opp. Grand Western Green,  
New Delhi – 110 038.

**V**

**Registrar of Companies, Delhi**

**...Respondent No.1**

Having Office at 4<sup>th</sup> Floor, IFCI Tower,  
61, Nehru Place,  
New Delhi - 110 019.

**2. INCOME TAX OFFICE,**

**...Respondent No.2**

Circle 1(1) Delhi,  
C.R. Building,  
New Delhi.

**Present:**

**For Appellant : Mr. Nupur Sharma, Advocate**

**For Respondent No.2 : Ms. Shubhika Saluja, Advocate for R-2**

**For Respondent No.1 : None**

**JUDGMENT**  
**(Virtual Mode)**

**JUSTICE M. VENUGOPAL, MEMBER (JUDICIAL)**

**IA/719/2021 in Company Appeal (AT) No.47 of 2021:**

1. According to the ‘Appellant’/‘Applicant’ in IA/719/2021 in Company Appeal (AT) No.47 of 2021 in CA No.350/252(ND)/2020 the

‘Appellant’/‘Applicant’ had received the certified copy of Impugned Order on 16.02.2021 only and that the ‘instant Appeal’ was filed on 15.03.2021, which is well within 45 days of the ‘Order’. Hence, the ‘Appellant’/‘Applicant’ prays for condoning the delay in preferring the ‘instant Appeal’.

2. The reason assigned by the ‘Appellant’/‘Applicant’ in not collecting the free copy of the order is due to ‘COVID-19 Pandemic’ and that the ‘Applicant’/‘Appellant’ had filed the Appeal’ on 12.03.2021 before the portal of the NCLAT, New Delhi with the delay of 25 days, the ‘Limitation’ is to be exempted, in the teeth of the order of the Hon’ble Supreme Court’s Order dated 08.03.2021 in Suo Motu Writ Petition (Civil) No.2 of 2020 in Re. Cognizance for Extension of Limitation. Viewed in that perspective, this ‘Tribunal’ by taking a liberal, pragmatic, practical, purposeful, and meaningful view allows the IA/719/2021 in Company Appeal (AT) No. 47 of 2021 and condones the delay in preferring the ‘Appeal’. No Cost.

### **INTRODUCTION:**

1. The ‘Appellant’ has focused the instant Company Appeal (AT) No. 47 of 2021 as an ‘Aggrieved Person’ being dissatisfied with the ‘Impugned Order’ dated 31.12.2020 in ‘Appeal No. 350/252(ND)/2020 passed by the National Company Law Tribunal, New Delhi, Special Bench (Court-II).

2. The National Company Law Tribunal, New Delhi, Special Bench (Court-II) while passing the ‘Impugned Order’ dated 31.12.2020 in ‘Appeal No.

350/252(ND)/2020 (filed under Section 252 of the Companies Act, 2013) among other things at paragraph 5 to 14 had observed the following:

5. "It is submitted by the Appellant Company that it was in operation since its incorporation. To corroborate its submission, the Appellant Company has placed the following documents on record •

- a) Copy of Financial Statements for the Financial Years from 2016-17 to 2018-19.
- b) Copy of the lease agreement executed on 22.03.2002, between Rajasthan State Industrial Development and Investment Corporation (RIICO) Limited depicting a piece of land known as Plot No. Hp".
- c) Copy of the Income Tax Return for the year 2006-07.
- d) Copy of the Bank Statement issued by Allahabad Bank for the period from 13.08.2010 to 31.12.2019

6. That the Income Tax Department has filed its reply and submitted that as per there e-filling database of the Assessee, no ITR was e-filled by the Assessee against the aforesaid allotted PAN,

7. The ROC, who filed its report, has made the following observation:

"6) That the Respondent most respectfully submits that the action of striking off of the present Company was legal and justified and was the result of the operation of the law, as the company was not carrying on any operations for a period of two immediately preceding financial years (as indicated by non-filing of the financial statements of the Company for two or more years). "

8. After hearing submissions and perusing documents placed on record by the Appellant Company, this bench observes that:

- i. That the Appellant Company has not filed its Income Tax Return after the Assessment Year 2006-07. Even the return filed for the

Assessment year 2006-07 depicts Nil Income of the Appellant Company.

- ii. That the Bank Statements Annexed by the Appellant Company contain no significant transactions from 08.06.2015 to 31.12.2019.
- iii. That the Balance Sheets placed on record by the Appellant Company shows the following Revenue from Operations.

Balance Sheet for the Financial Year	Revenue from Operations (in
2016-17	1,87,110
2017-18	2, 44,340
2018-19	2,49,000

However, the same seems to have been prepared after the date of Striking off.

9. That on 07.12.2020, this tribunal has observed the following

"In course of hearing it has come to our notice that the Appellant has not filed the documents to establish that the Appellant had been in business during the defaulting year. Therefore, the Appellant is well- advised to bring all the documents on the records within 3 days from today...."

10. That the Appellant Company in response to the same has filed its balance sheets from the financial year 2006-07 to 2018-19 which were prepared after the date of striking off. Other than that no additional evidence has been placed on record, which could depict that the company was in operation or carrying out business as per its objects. Also, the Appellant Company failed to produce any document in support of utilization of plot on lease by RIICO Ltd.

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 that 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. There is nothing placed on record pertaining to the period prior to 01.09.2017, which could prove beyond doubt that the company was in operation or was carrying out its business. The ROC in its report has also observed that the company was not carrying on any operations for a period of two immediately preceding financial years as indicated by non-filing of the financial statements of the Company for two or more years.

13. In the circumstances, it would be appropriate to refer to the Judgement of Hon'ble NCLAT in the matter of **Alliance Commodities Private Limited Vs. Office of 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 in spite 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’.

### **APPELLANT’S SUBMISSIONS:**

3. The Learned Counsel for the ‘Appellant’ submits that the ‘Appellant’/‘Company’ was duly incorporated on 25.08.1995 under the Companies Act, 2013 and that ‘Notice’ dated 13.06.2017 was issued to it, by the 1<sup>st</sup> Respondent/Registrar of Companies, New Delhi and later proceeded in terms of Section 248 of the Companies Act, 2013 for ‘striking off’ the ‘Appellant’/‘Company’s name from the ‘Registrar of Companies’. The 1<sup>st</sup> Respondent/Registrar of Companies, through Notice dated 01.09.2017, had struck off the ‘Appellant’s name from the Register.

4. It is represented on behalf of the ‘Appellant’ that the 1<sup>st</sup> Respondent/Registrar of Companies had not objected to the restoration of the ‘Appellant’/Company but prayed for a direction being issued to the ‘Appellant’/Company to file all pending written as mentioned by the 1<sup>st</sup> Respondent, in its Report-cum-Affidavit.

5. The 2<sup>nd</sup> Respondent/Income Tax Officer, Circle 1(1) Delhi, through its 'Status Report' dated 10.11.2020 had not opposed the Restoration of the Appellant Company and that the 'Tribunal', through the 'Impugned Order' dated 31.12.2020 had dismissed the 'Appeal' filed by the 'Appellant'.

6. The Learned Counsel for the 'Appellant'/'Company' contends that the 'Company' has substantial 'Assets and Liabilities' which can be seen from its 'Financial Statements' (Annual Statements filed for the year ending 31.03.2017, 31.03.2018 and 31.03.2019) and the substratum of the 'Appellant'/'Company' also continues to remain intact. In this connection, the stand of the 'Appellant' is that, the 'Appellant'/'Company' had filed an Affidavit in respect of the 'Auditor's Report' for the 'Financial Year 2006-07, 2007-08, 2008-09, 2009-10, 2010-11, 2011-12, 2012-13, 2013-14, 2014-15, 2015-16, 2016-17, 2017-18 and 2018-19 for the perusal and consideration of the 'Tribunal'.

7. The crystalline stand of the 'Appellant'/'Company' is that it owns a valuable 'immovable property and in its name for the purpose of its 'Business Activities' which is situated at Bank and Post Office Building RIICO Industrial Area – Shahpura, Rajasthan and therefore is of great importance to this Stakeholders, where the 'Appellant'/'Company' is running a 'Hotel' and a 'Restaurant' on the aforementioned property belonging to the 'Company'.

8. According to the Learned Counsel for the 'Appellant'/'Company', the 'Appellant' was verily carrying on its business of 'Hotel/Restaurant' continuously and was very much operative at the relevant point of time. But due to the reason

that a long flyover on the Road adjacent to its Business Premises was under construction for a long period which hindered even its view, etc. of the passing vehicle resulting into 'Loss of Business' and thereafter, because of the global outbreak of sudden pandemic the revenue receipts of the company were very meagre resulting into continuous loss and only for that reason, the 'Company' could not file the 'Statutory Returns' in time.

9. It is represented on behalf of the 'Appellant' that the 'Directors'/'Shareholders' of the 'Appellant'/'Company' could not file a 'Reply' to the 1<sup>st</sup> Respondent's Notice dated 13.06.2017, as the same was not served upon the 'Appellant'/'Company' or its 'Directors'/'Shareholders'. Further, when the 'Appellant'/'Company' was about to file the required documents, they came to know that the 'Appellant'/'Company's name was 'struck off' by the 1<sup>st</sup> Respondent/'Registrar of Companies', Delhi, restraining it to file the Documents.

10. The contention of the 'Appellant' is that the 1<sup>st</sup> Respondent/'Registrar of Companies' has nowhere prayed that the 'Appellant'/'Company' should remain 'struck off', rather it had prayed that the 'Appellant'/'Company' be directed to file all the pending returns of the 'Appellant'/'Company'.

11. The Learned Counsel for the 'Appellant' submits that as soon as the 'Appellant'/'Company' came to know about the non-filing of 'Statutory Returns', it immediately approach the 'National Company Law Tribunal' to permit them to do the same.



12. The Learned Counsel for the ‘Appellant’ points out that the 2<sup>nd</sup> Respondent in its ‘Report’ dated 10.11.2020 had mentioned that there was no objection on its side, for the ‘Restoration’ of the ‘Appellant’/‘Company’ and the relevant portion is as follows:

*“Further, form e-filing database of the assessee, it is observed that no ITR was e-filed by assessee against the aforesaid allotted PAN.*

*However, this Office has no objection to the revival of the company in RoC.”*

13. It is vehemently contended on behalf of the ‘Appellant’/‘Company’ that it has ‘Assets and Liabilities’ and is continuously carrying on its business operations and is following its objects. The ‘Appellant’ while filing the ‘Appeal’ before the ‘National Company Law Tribunal’ filed the ‘Annual Statements’ of the ‘Appellant’/‘Company’ for the year ending 31.03.2017, 31.03.2018 and 31.03.2019.

14. Apart from that, it is the submission of the Learned Counsel for the ‘Appellant’/‘Company’ that none of the ‘Shareholders’ or ‘Creditors’ of the ‘Appellant’/‘Company’ shall be prejudiced by the ‘Order of Restoration’.

**1<sup>ST</sup> RESPONDENT/REGISTRAR OF COMPANIES REPLY:**

15. The ‘Impugned Order’ passed by the ‘National Company Law Tribunal’ New Delhi, Special Bench (Court-II) in Appeal No.350/252(ND)/2020 dated 31.12.2020 is a correct one, passed after due consideration of the relevant facts, including the fact that as per Records of the 1<sup>st</sup> Respondent, neither the ‘Appellant’/‘Company’ was carrying on ‘any operation’ for a period of two

immediately preceding Financial Year nor have any immovable property in its name. In fact, the ‘Appellant’/‘Company’ was unable to produce before the ‘National Company Law Tribunal’ any just and equitable ground for revival and hence, the ‘Impugned Order’ is a fair, just and a valid one in the ‘eye of law’. There is no equitable ground for revival of the ‘Appellant’/‘Company’ and that the ‘Appellant’/‘Company’ had not produced any supporting information that it was carrying on ‘Business’ at the time of passing the ‘Impugned Order’ by the ‘Tribunal’.

### **Glimpse of Decisions:**

#### **Hon’ble High Court Decisions:**

16. In the matter of ‘Ascot Shoes Private Limited’ v ‘Registrar of Companies’ reported in (2017) 2 Comp LJ118(Del) the Hon’ble High Court of Delhi at paragraph 12 had *inter alia* observed as under:

*“12..... Looking to the fact that the Petitioner is stated to be a running company, and that it has filed this petition within the stipulated limitation period, and to the decision of the Bombay High Court in Purushottamdass and Anr. (Bulakidas Mohta Co. P. Ltd.) v Registrar of Companies, Maharashtra & Ors. (supra); it is only proper that the impugned order of the respondent dated 23.06.2007 which struck off the name of the petitioner from the Registrar of Companies, be set aside. At the same time, however, there is no gainsaying the fact that a greater degree of care was certainly required from the petitioner Company in ensuring statutory compliances. Looking to*

*the fact that annual returns and balance sheet were not filed for almost fourteen years, the primary responsibility for ensuring that proper returns and other statutory documents are filed in terms of the statute and the rules, remains that of the management.”*

17. In the decision in ‘Purushottam Dass’ v ‘Registrar of Companies’, Maharashtra, (1986) 60 Comp. Cas. 154 (Bom) the Hon’ble High Court of Bombay had observed as under:

*“The object 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 period of 20 years, and give them on the business only after the company judge is satisfied that such restoration is necessary in the interest of justice.”*

18. In the matter of M.A. Panjwani v Registrar of Companies and Ors. (2015) 124 CLA 109 (Delhi) the Hon’ble High Court of Delhi at paragraph 16 had observed the following:

*“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."*

19. 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 under:

*"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 21<sup>st</sup> April, 2010."*

**HON'BLE SUPREME COURT'S DECISION:**

20. At this stage, this 'Tribunal' worth recalls and recollects the Hon'ble Supreme Court's decision in '*Helen C. Rebella*' v '*Maharashtra S.R.T.C.*, (1999) 1 Supreme Court Cases at Page 90 wherein it is observed that 'the word 'just'

denotes ‘Equitability’, ‘Fairness’ and Reasonableness’ having a large peripheral field. In understanding its scope, one must take into account all the facts and circumstances of the case and then decide what would be just and equitable.”

### **HON’BLE HIGH COURT’S DECISIONS:**

21. In the decision in M.A. Rahim and Anr. v Sayri Bai (DB) [vide MANU/TN/0218/1973] wherein it is held that ‘the word ‘just’ connotes reasonableness and something conforming to ‘rectitude’ and justice, something equitable and fair.’

22. In the decision of the Hon’ble Madhya Pradesh High Court in VI Brij Fiscal Services P. Ltd. v Registrar of Companies reported in (2010) 155 Comp. Cas. 157 (MP), it is observed and held as under:

*“It has been averred by the petitioner that the shareholders of the company are now of the opinion that the circumstances leading to closure of activities of the company and non-commencement of business no longer exist and there are favourable circumstances under which the main business of the company as financial and investment consultant can be restarted in the best interest of the company, its shareholders and other concerned who may be directly or indirectly associated with the business activities of the company. In*

*the circumstances the shareholders of the company took a joint decision and vide consent letter dated May 30, 2009, have decided to revive the company. In the circumstances, this Petition has been filed under Section 560(6) of the Act seeking a direction to the respondents for restoring the company's name in the Register of Companies.*

*Having considered the contention raised by learned Counsel for the petitioner and having gone through the provisions contained in section 560(6) of the Act and the averments made in the petition I am of the view that it would be just and proper to order restoration of the name of the company in the Registrar of Companies.*

*Accordingly, the petition is allowed. The respondent Registrar is directed to restore the name of the company in the Registrar of Companies, treating as if its name had never been struck off from the rolls of the register. The petitioner is directed to deliver the respondent Registrar of Companies a certified copy of this order within the*

*time fixed under Rule 93 of the Rules.  
The Registrar thereafter shall  
proceed in the matter in accordance  
with the Act and the Rules. No order  
as to costs.”*

23. In the decision in *Intec Corporation Private v the Registrar of Companies* (2017) 201 Com Cas 18 (Delhi), the Hon’ble High Court of Delhi had observed the following:

*“As a matter of law, it cannot be said that where the company’s name had been struck off on an application filed under Simplified Exit Scheme the company cannot be restored. In fact, the Madhya Pradesh High Court in VI Brij Fiscal Services P. Ltd. v Registrar of Companies, (2010) 155 Comp. Cas. 157 (MP) has restored a company which had been struck off under the Simplified Exit Scheme.”*

*“In view of the foregoing, and upon considering the facts and circumstances of the present case, I am of the view that it would be just and proper to order restoration of the name of the Petitioner Company in the Registrar of Companies maintained by the Respondent.*

*Upon the Petitioner Company filing all the statutory documents i.e. Annual Returns and Balance Sheets till date, along with the prescribed filing fee and additional fee in compliance with all the statutory requirements, the name of the Petitioner Company had not been struck off”.*

### **CONCEPT OF JUSTNESS:**

24. In the matter of ‘Sidhant Garg and Anr. v ‘Registrar of Companies and Ors.’ reported 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.

### **APPELLATE TRIBUNAL’S JUDGMENTS:**

25. In the Judgment of this ‘Tribunal’ dated 14.12.2018 in Company Appeal (AT) No. 84 of 2018 between G.S.C. Industries Pvt. Ltd. Delhi & Anr. v ‘Registrar of Companies’, NCT of Delhi and Haryana, New Delhi, wherein at paragraph 18 to 23, it is observed as under:

*18. “What is material to be shown by Appellant is that at the time of striking off the Company was carrying business or was in operation. For this purpose, the documents subsequent to the date of striking off the name of the Company would not*



*be material for consideration of the first two aspects as mentioned above although those documents may be relevant for considering the question whether it would be just that the name of the Company should be restored.*

*19. As far as records, the claim that the Company was in operation, there were no such pleadings in the Company Petition that although the Company was not in business since 2002, it continued to be in 'operation' even thereafter till the name of the Company was struck off. The additional documents now being relied on were not filed before NCLT and there were no pleadings on this count also.*

*20. We have heard Counsels for both the sides. Learned Counsel for the Appellant submitted that in the present matter there are documents to show that on complaint of workmen, authority had initiated action and the company was defending the same. It is stated that documents have been filed to show that the property tax was being paid. Reference is made to one Annexure – A7 (page no. (62) to submit that in the “Charges Registered” there is a charge of Punjab & Sind Bank on the property for the Company which is still alive in the records. Learned Counsel submitted that the Company paid property tax in 2011 which was after the date of striking off in 2007. According to the Appellant, it never knew*

*that the name of the Company was struck off. It has been submitted that although the business got affected in 2002 because of multiplex, the company continued to remain in operation. It is claimed that this can be seen from the various documents which have now been filed in this appeal.*

*21. In course of argument, it has been noticed that the Company Petition filed in NCLT did not contain pleadings to spell out that the company was in operation. Pleadings to make out a case to the effect that “it is just that the company be restored” were also not there. The Appellants have now filed additional affidavit. It is mentioned in Paragraphs 12 & 13 as under:*

*“12. One of the submissions of the Appellants in the course of the arguments was to seek remand of the matter to Hon’ble NCLT for fresh consideration based on all the additional documents placed in record before this Appellate Tribunal till date.*

*13. The Appellants is desirous to get the present appeal disposed off with a direction to remand back the matter to Hon’ble NCLT for fresh adjudication based on all the documents/evidences placed on till date, with an opportunity to amend the original petition on the basis of*

*the additional evidence taken on record by the Hon'ble NCLT vide order dated 03.08.2018.”*

*22. The Appellants thus want that the pleadings in the petition filed in NCLT with regard to the claims being made that the Company was in operation when it was struck off and that there exist just reasons to restore the name of the Company. We do not have the benefit of observations of the learned NCLT with regard to various documents which have now been filed in appeal as they were not before learned NCLT when the impugned order was passed. It would be appropriate that the matter is remitted back to the learned NCLT for re-hearing.*

*23. We pass the following order:*

*a) Appeal is allowed. The impugned judgment and order is quashed and set aside. The original petition is restored to file before National Company Law Tribunal, Delhi. The matter is remitted back to the learned NCLT for re-hearing.*

*b) Learned NCLT is requested to give opportunity to the Appellant to amend the petition so as to add pleadings with regard to the claim of the Appellant that company was in operation when it was struck off and that there are just reasons as to why the name of the company should be restored.*

*c) The Appellant be given opportunity to file in NCLT copies of additional documents filed by them in this appeal (if not already filed).*

*d) Fresh opportunity of hearing may be given to both sides and the petition may then be disposed of as per law.*

*e) Parties to appear before NCLT on 8<sup>th</sup> January, 2019.”*

26. In the Judgment of this ‘Tribunal’ dated 31.12.2019 in 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:

*Para 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.*

*Para 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.*

### **ROLE OF TRIBUNAL/APPELLATE TRIBUNAL:**

27. A ‘Tribunal’ or an ‘Appellate Tribunal’ is to act in an ‘objective’ manner in determining the ‘Legal Proceedings’ before it, of course in a ‘judicious manner’, which will be in the ‘Spirit Of Judicial Administration’ as opined by this ‘Tribunal’.

### **JURISDICTION TO ORDER COSTS:**

28. It must be borne in mind that in restoring a Company to the ‘Register of Companies’, the court has no jurisdiction to impose any penalty for the defaults under the Act, but may order costs as a term of restoration as per decision in ‘Re Moses and Cohens Ltd. (1957) 3 All England Reporter at page 425.

## **RIGHT TO RESTORE COMPANY'S NAME**

29. It cannot be brushed aside that the 'Right to Seek' Restoration of a name of a 'Company' to the 'Register of Companies' maintained by the 'Register of Companies' is not extinguished so long as 'Twenty Years' had not expired.

## **'STRIKING OFF' & TRIBUNAL'S POWER:**

30. In real sense, the term 'Striking Off' is alternate to 'Winding Up'. The occurring of the words '*or otherwise*' in Section 252 (3) of the Companies Act, 2013 connotes that even when the 'Company was not carrying on any Business' or was 'not in Operation' at the time of striking off, the 'Tribunal' yet has the 'option' to order 'restoration of a Company's name' in the 'Register of Companies', if it appears to it, to be '*otherwise just*'.

31. Added further, the 'Tribunal' can pass an order of 'Restoration of a Company's name' to the 'Register of Companies', if it is that, it is 'Just And Proper' to restore the name of the Company, then, 'declining' to grant relief just because of third person will be inconvenienced by it, will not be a proper one, in the earnest opinion of this 'Appellate Tribunal'.

## **ENGLISH DECISIONS:**

32. 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).*

33. In the matter of *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.”*

### **DORMANT COMPANY**

34. It is pertinently pointed out that the term ‘Dormant’ is not defined under the Companies Act, 2013. More importantly, Section 455 of the Companies Act, 2013 mentions ‘Dormant Company’. The word ‘Dormant’ in ‘Business Per longs’ means an entity’s identity being unknown to others, inactive and a passive one. No wonder, in law, a ‘Company’ can apply for securing the nomenclature of a ‘Dormant Company’ by passing a ‘Special Resolution’ at the General Meeting of the Company or by getting shareholders’ consent holding at least ‘3/4<sup>th</sup> of the Shares in Value’.

### **EFFECT OF DISSOLUTION:**

35. To put it precisely, the effect of Dissolution of a ‘Company’ is that the ‘Certificate of Incorporation’ granted to the Company is deemed to be Annulled from the date of ‘Dissolution’. A company which is dissolved cannot run its business operations keeping in tune with the ‘Memorandum of Articles of Association’ or with its Objects Clause.

### **EVALUATION:**

36. Before the ‘National Company Law Tribunal’, Delhi Bench, the Appellants in Company Appeal No.350/252(ND)/2020 (filed under Section 252 of the Companies Act, 2013) for Restoration of the name of M/s. AVS Enterprises Pvt. Ltd. on the Register of Companies maintained by the Register of Companies, NCA, Delhi) had averred that the Company is regularly complying with the



‘Income Tax Act’ and had filed its ‘Income Tax Returns’, since incorporation and that the Company has ‘assets and liabilities’ and is continuously carrying out its business operations by following its objects. Furthermore, the ‘Financial Statements’ of the Company for the year ending 31.03.2017, 31.03.2018 and 31.03.2019 point out that the Company is a Going Concern and is continuously carrying out its Business Operations.

37. According to the ‘Appellants’ the Company’s Shareholders’ intend to run the Business and pay off the ‘liabilities’ as per ‘Balance Sheet of the Company’. In fact, the ‘struck off company’ at present, is having ‘paid-up capital’ of Rs.4,99,000/- consisting of 49,900 Equity Shares’ of Rs.10/-each and all the ‘Shareholders’ hold the total paid-up ‘Share Capital of the Company’ and ‘struck off company’ would suffer losses. The ‘Appellants’/100% shareholders of the Company had filed the Company Appeal No.350/252(ND)/2020 before the ‘Tribunal’ seeking name of the Company be ‘Restored’, and such ‘Restoration’ would shall be in the Company’s interest, Shareholders interest and the ‘Public Interest’. If the name of the ‘Company’ is ‘Restored to the Register of Companies’ maintained by the 1<sup>st</sup> Respondent/Register of Company, it is the plea of the Appellants that no one shall suffer any prejudice. In case, the ‘Restoration’ is not ordered, then the ‘Appellants’ and persons related to the Company would suffer an irreparable loss. Hence, the ‘Appellants’ pray for allowing the Company Appeal No.350/252(ND)/2020 filed before the ‘Tribunal’ and for issuance of directions to the 1<sup>st</sup> Respondent/Registrar of Companies (i) to restore the name of

the Company M/s. AVS Enterprises Pvt. Ltd. (CIN:U74899DL1995PTC071973) to the Register of Companies maintained by Register of Companies, Ministry of Corporate Affairs, New Delhi, (ii) in directing the 1<sup>st</sup> Respondent to allow the Company to file the documents and further direct in taking on record the said Documents, as per the fees mandated under the Act, (iii) to release the instruction/Direction to the Bankers for activation of 'Operations' of Companies Bank Account No.20361084301).

38. The stand of the 1<sup>st</sup> Respondent/Register of Companies NCT, Delhi and Haryana is that the last 'Annual Return' and 'Balance Sheets' submitted by the Company to the 1<sup>st</sup> Respondents' Office relate to the 'Financial Year' that ended on 31.03.2006, prior to the Company being considered for 'striking off' and no documents subsequently were filed by the Company before the 1<sup>st</sup> Respondent, to secure the status of a 'Dormant Company' as per Section 455 of the Companies Act. Since the 1<sup>st</sup> Respondent Office had a reasonable cause to believe that the 'Company' was not in operation, therefore the Company's name was considered for 'striking off' from the 'Register of Companies'.

39. According to the 1<sup>st</sup> Respondent/Register of Companies, its Office had intimated the 'Company' and its Directors through STK-1 during March 2017 at the Registered Office about the defaults in question, provided them a 'Fair Opportunity' to respond. Later, a 'Public Notice' for the same was issued in the form of STK-5 dated 13.06.2017. In fact, the Company's name was struck off vide 'Notice' in the form of STK-7 dated 21.08.2017. Because of the fact that the

Company's was not carrying on any operations for a period of two immediately preceding Financial Years (as indicated by non-filing of the Financial Statements of the Company for two or more years), the 'striking off' of the present Company was legally a 'justifiable' one by means of an 'Operation of Law'.

40. In short, the 1<sup>st</sup> Respondent in its 'Reply' before the National company Law Tribunal, New Delhi Bench (Court II) came out with the prayer that if the 'Tribunal' considers the 'Application' for Restoring the 'Name of the Company' in the Register of Companies', then the 'Tribunal' may issue directions to the Appellant for filing all the pending documents of the Company with it within the time specified by the 'Tribunal'. Also, on behalf of the 1<sup>st</sup> Respondent a relief of 'awarding of costs' in favour of it was sought before the 'Tribunal', as the Company had failed to file its 'Statutory Returns' before it.

**'Preferring of an Appeal':**

41. It is pointed out that Section 252(1) of the Companies Act, 2013 indicates that 'any person aggrieved by the Order of the Registrar, notifying a 'Company' as dissolved under section 248 is entitled to prefer an 'Appeal' to the National Company Law Tribunal'. Furthermore, if a Company or any 'Member' or 'Creditor' feels aggrieved, they would also be competent to file an 'Appeal' against the 'Order' of the 'Registrar of Companies' before the expiry of 20 years from the date of 'Publication' of Order in the Official Gazette, in terms of the ingredients of Section 252(3) of the Companies Act, 2013.

### **Fulfilment of Conditions:**

42. Indeed, Section 252(3) of the Companies Act, 2013 points out that one of the three conditions need to be satisfied before exercising the 'jurisdiction' to restore a company to the 'Registrar of Companies' on the file of 'Registrar of Companies'. In fact, the 'Company' at the time of its name was struck off was to carry on business, or it was in operation, or it is otherwise just that the 'Name of the Company' be restored on the 'Register'.

### **Annual Return:**

43. The 'Liability' under Section 92 of the Companies Act, 2013 is that even a defunct company, like every other Company is under an obligation to file the Statutory 'Annual Returns' till it is wound up or till such time, the Company is struck off by the Registrar u/s 248 of the Companies Act, 2013.

44. It is relevantly pointed out that the Hon'ble Supreme Court in Civil No. 6803-6805 of 2021 between R. Narayanasamy v The Registrar of the Companies, Tamil Nadu on 22.11.2021 had ordered 'Issuance of Notice' and the 'Civil Appeal' is pending.

45. As far as the present case is concerned, even though, the 1<sup>st</sup> Respondent/'Registrar of Companies' has come out with the plea that the 'Company' was incorporated on 25.08.1985 and the last Annual Return and Balance Sheet was submitted by the 'Company' to its office, before it was considered to be 'struck off', relate to the 'Financial Year' that ended on

31.03.2006 and later, no documents were filed by the 'Company' to claim the status of a 'Dormant Company' under Section 455 of the Companies Act, 2013, this 'Tribunal' taking note of the fact that the 'Company' has 'Assets and Liabilities' and more so, keeping in mind that the 'right to seek restoration' of the name of the 'Company' (to be entered in the 'Register of Companies') is not extinguished/lost as long as 20 years have not expired, and besides these, the 1<sup>st</sup> Respondent in its 'Reply' before the 'Tribunal' had mentioned that the 'Tribunal' may kindly issue directions to the 'Appellant'/'Petitioner' to file all documents of the 'subject company with it, of course, within the time specified by the 'Tribunal', in all 'Fairness' 'Reasonableness' and 'Equitableness' is of the earnest opinion that it is just and proper to restore the name of the Company and that the omissions/lapses/failures on the part of the Management of the Company in not filing the 'Annual Returns' and 'Financial Statements' in time can be fastened with a levy of cause, to secure the 'Ends of Justice'. Otherwise, it will cost 'irreparable hardship' and 'Prejudice' to the 'Company', as opined by this 'Tribunal'. However, the converse view arrived at by the 'National Company Law Tribunal, New Delhi Special Bench (II)' in the 'Impugned Order' in Appeal No.350/252(ND)/2020 is an incorrect and unsustainable one in Law. Looking at from that perspective, the 'Appeal' succeeds.

**Conclusion:**

46. In fine, the Instant Company Appeal (AT) No.47 of 2021 is allowed. No costs. The Impugned Order dated 31.12.2020 in Company Appeal No.350/252(ND)/2020 passed by the National Company Law Tribunal, New Delhi Special Bench, Court II is set aside by this ‘Appellate Tribunal’ for the reasons ascribed in this ‘Appeal’. The ‘Notice’ of ‘striking off’ and ‘dissolution’ in the required Form No.STK-7 dated 21.08.2017 is set aside. It is abundantly made quite clear that the ‘Restoration of the Name of the Appellant’s 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 or any other charges which are leviable by the 1<sup>st</sup> Respondent for late filing of ‘Statutory Returns’ and also on payment of cost of Rs.40,000/- (Rupees Forty Thousand only) to be paid to the ‘Prime Minister Relief Fund’. 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. All connected pending IA/IA’s if any, is/are closed.

**[Justice M. Venugopal]**  
**Member (Judicial)**

**[Dr. Ashok Kumar Mishra]**  
**Member (Technical)**

**05.04.2022**  
**SE**