

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,

PRINCIPAL BENCH, NEW DELHI

Company Appeal(AT) No. 14 of 2021

IN THE MATTER OF:

**M/s.Subh Laxmi Colonizers Pvt. Ltd
106, Bahubali Enclave,
Vikas Marg Extension,
New Delhi – 110 092**

...Appellant

Vs.

**1. Registrar of Companies, Delhi
4th Floor, IFCI Tower, Nehru Palace,
New Delhi – 110 019**

...Respondent No.1

**2. Income Tax Department, DCIT
428-429, Lawyers Chamber, Block-I,
Delhi High Court, Shershah Suri Marg,
New Delhi – 110 003**

...Respondent No.2

Present:

For Appellant : Mr.Ashutosh Gupta, Mr. Gaurav Rana, Advocates

**For Respondents : Mr. Sanjay Kumar, Sr. Standing Counsel, Ms. Easha
Standing Counsel for Income Tax, R2
Mr. Himanshu Chakrawarty, Advocate for R2**

J U D G M E N T

DR. ASHOK KUMAR MISHRA, TECHNICAL MEMBER

1. The present appeal has been filed by the Appellant- 'Subh Laxmi Colonizers Pvt. Ltd. through its Authorised Official/Director – Mr. Ashok Kumar Gupta, under Section 421 of the Companies Act, 2013 (for short Act) against the impugned order dated 21st December, 2020 passed by the 'National Company Law Tribunal, New Delhi, Special Bench (Court-II) (for short 'NCLT') Appeal No. 213/252 (ND)/2020.
2. It is the case of the Appellant Company that it was incorporated on 28th April, 2006 under the Companies Act, 1956 and is engaged in the field of 'Real Estate Development Projects'. The Appellant has submitted that there is an ongoing dispute with 'Mathura Vrindavan Development Authority' (MVDA) and the 'Hon'ble High Court of Judicature at Allahabad' vide its order dated 04th February, 2016 in Writ –C No. 38625 of 2012 (appearing at page no. 58 of the Appeal Paper Book) has observed as follows:

“The Writ Petition is pending since 2012.

In our opinion, if the petitioner has any grievance in the matter, he is at liberty to approach the State Government under Section 41(3) of the U.P.Urban Planning and Development Act, at the first instance.

The Writ Petition is dismissed with the aforesaid liberty.”

3. It is also stated by the learned counsel for the Appellant that there is an advance against MVDA to the extent of Rs. 71,00,000/- appearing under the heading Long-Term Loans and advances (Non-current Assets) in the 'Balance Sheet' of the Appellant Company as at 31st March, 2017 duly audited by the 'Chartered Accountant' FRN-01253N for SAGC And Associates – Sanjeev Kumar Garg (Partner) M.No.093936.
4. It was also stated by the learned Counsel for the Appellant that they have approached the 'State Government' dated 10th April, 2018 but no response received from the State Government. The Appellant has also stated that as on 31st March, 2017, they have other transaction upto that date (page 81 of the Appeal Paper Book):

Sr.	Particular	Amount (INR)
	Liabilities	
1.	Long Term Borrowings	64,62,500/-
2.	Advance Against property	7,20,000/-
3.	Non-Current Assets - Long Term loans and advances	71,00,000/-

4.	Cash & cash equivalents	57,137
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5. The learned counsel for the Appellant has submitted that the Company is doing business and hence is entitled to get the restoration. They have also cited the following judgments of this Tribunal for consideration:

- *Khetan Granite Pvt. Ltd. Vs. Office of Registrar of Companies, Jharkhand, MANU/NL/0017/2020*
- *Calcutta Rubber Factory Pvt. Ltd. and Ors. Vs. Registrar of Companies, Delhi and Harayana, MANU/NL/0602/2019*
- *Insuflex Ind Pvt. Ltd. Vs. Registrar of Companies, Maharashtra and Ors. MANU/NL/0622/2019*
- *Basant Kumar Berlia and Ors. Vs. Registrar of Companies, West Bengal Nizam Palace and Ors., MANU/NL/0031/2019*

In view of the above, the Appellant has sought the restoration of the name of the Company.

6. The Learned Counsel for the Respondent has stated that the Appellant Company has filed its 'Financial Statement' till 31st March, 2015 only due to which the Respondent had reasonable cause to believe that the

Appellant company was not in operation. Notice sent to the Appellant Company under Section 248(1) of the Act and also to its Director. The Appellant company has been issued STK-1 vide Letter No. ROC Delhi248(1)0775182018 – ‘Notice by Registrar for removal of name of a company from the register of companies’ and the same is depicted below:

“1).The Company is not carrying on any business or operation for a period of two immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant company under Section 455.

2).Therefore, on the basis of aforesaid ground(s), I intend to remove the name of Company from the register of companies and request you to send your representation along with copies of the relevant documents, if any, within thirty days from the date of receipt of this notice.

3). Unless cause to the contrary is shown within the time period above mentioned, the name of the above mentioned company shall be liable to be removed from the register of companies. However, the directors of the company shall be liable for appropriate action under the Act.”

7. The Respondent has also stated that no 'Income Tax Return' have been annexed by the Appellant. The dispute between the Appellant Company with a third party cannot be a ground for non-filing of 'Balance Sheet' or 'Annual Income Tax Return'. If it is a real estate company, it should have placed ownership of certain land and property or fixed assets or some projects under development which they have not done and accordingly, this appeal deserves to be dismissed.
8. The NCLT while passing the impugned order dated 21st December, 2020 has observed at para 5, 6, 8, & 10 as depicted below:

“Para 5 – It is averred by the Appellant that it has an ongoing dispute with the Mathura Vrindavan Development Authority. Therefore, it could not file its Annual Returns, Financial Statement and Income Tax Returns with the statutory authorities.

Para 6 – It is further submitted by the Appellant that “it received the order from the Hon’ble High Court of Judicature at Allahabad on 04.02.2016, wherein it was stated that the Company is at liberty to approach the State Government under Section 41(3) of the U.P Urban Planning and Development Act, 1973 at the first instance.”

Para 8- That the Appellant Company has placed on record the copies of the Financial Statements for the period from 2015-16 to 2018-19 and Bank Statements from 05.034.2014 to depict that the Company was in operation.

Para 10 – After hearing submissions of the Appellant and perusing the documents placed on record by the Appellant, this Bench observes:

- (i) That the balance Sheets placed on record by the Appellant shows a Revenue of Rs. 23,500 only during the Financial year 2015-16 and Nil revenues from the Financial Year 2016-17 to Financial year 2018-19 from its operations.*

<i>Financial year</i>	<i>Revenue From Operations (in Rs.)</i>
<i>2015-16</i>	<i>23,500</i>
<i>2016-17</i>	<i>Nil</i>
<i>2017-18</i>	<i>Nil</i>
<i>2018-19</i>	<i>Nil</i>

“In view of the stated reasons, the Bench has not shown inclination to interfere with the striking off action taken by the ROC against the Appellant company under the provisions of Companies Act, 2013.”

Based on the above observations, the NCLT has not shown inclination to interfere with the striking off action, taken by the ROC against the Appellant Company under the provisions of Act.

9. We have carefully perused the pleadings of all the parties and extant provisions of the Companies Act, 2013 and Rules made there under and we are having the following observations: -

- a) The revenue from the options as reflected in the impugned order dated 21st December, 2020 is totally correct i.e in the Financial Year 2015-16 of Rs. 23,500/- and thereafter Nil.
- b) We also agree with the observations of the NCLT that the ‘Bank Statement’ attached by the Appellant and appearing at page no. 97 and 98 of the Appeal paper book does not reflect any transactions between 08th October, 2017 and 16th August, 2019.
- c) We also agree with the NCLT that no income tax return have been filed by the Appellant. Although no reply has been filed by the Standing Counsel for Income Tax but the learned Standing counsel for Income Tax has confirmed that no income tax return has been

filed with the Income tax department so far. The Learned Standing Counsel did not provide any negative input about the Appellant Company. However, the extract appearing at page 58- Annexure E reflects that the Appellant got the bid of MVDA being the highest bidder and for meeting the requirement of 25 % of the bid offer, they deposited a Cheques of State Bank of India for Rs. 3 lakhs and the same was bounced. The Appellant failed to get the bid because of non-compliance of the terms and conditions of the auctions and hence its security money was also forfeited. The Hon'ble High Court of Judicature at Allahabad has asked the Appellant to approach the 'State Government' under Section 41(3) of the 'U.P Urban Planning And Development Act', if he has any grievance in the matter. The Appellant has approached the State Government on 10.04.2018 (as per the oral submission) and has not received any response so far.

- d) It is quite astonished to observed that the Hon'ble High Court of Judicature at Allahabad passed the order on 04th February, 2016 and the Appellant has approached the 'State Government' on 10.04.2018 after the lapsed of two years. This itself seems to be a casual approach of the Appellant.
- e) The Appellant's 'Balance Sheet' just reflects certain loans and advances and other non-current assets including certain long term

borrowings and certain advances for properties as appearing at page 62 of the Appeal paper book and the same is depicted below:

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SUBH LAXMI COLONIZERS PRIVATE LIMITED
 106, BAHUBALI ENCLAVE VIKAS MARG EXTN. NEW DELHI-110092
 CIN - : U70101DL2006PTC148474
 BALANCE SHEET AS AT 31ST MARCH, 2019

PARTICULARS	NOTES NO.	As At 31st March 2019	As At 31st March 2018
I. EQUITY AND LIABILITIES			
(1) Shareholders' Funds			
Share Capital	3(1)		
Reserve and Surplus	3(2)	1,00,000.00	1,00,000.00
		(24,697.00)	(17,542.00)
(2) Non-current Liabilities			
Long term borrowings	3(3)		
Advance against property	3(3)A	64,62,500.00	64,62,500.00
(3) Current Liabilities			
Other current liabilities	3(4)	7,20,000.00	7,20,000.00
Short term Provisions	3(5)	20,000.00	15,000.00
Total		72,77,803.00	72,79,958.00
II. ASSETS			
(1) Non-current assets			
(a) Long-term loans and advances	3(6)	71,00,000.00	71,00,000.00
(b) Other Non Current Assets	3(7)	1,27,618.00	1,27,618.00
(2) Current assets			
Cash & Cash Equivalents	3(8)	50,185.00	52,340.00
Total		72,77,803.00	72,79,958.00

This is the Balance Sheet referred to in our report of even date and should be read in conjunction with the accompanying notes.

For D.Mangla & Associates
 Chartered Accountants
 FRN - 030756N
 Darpan Mangla
 Partner
 M.No. 539744
 Place: Delhi

For and on behalf of Board of Directors

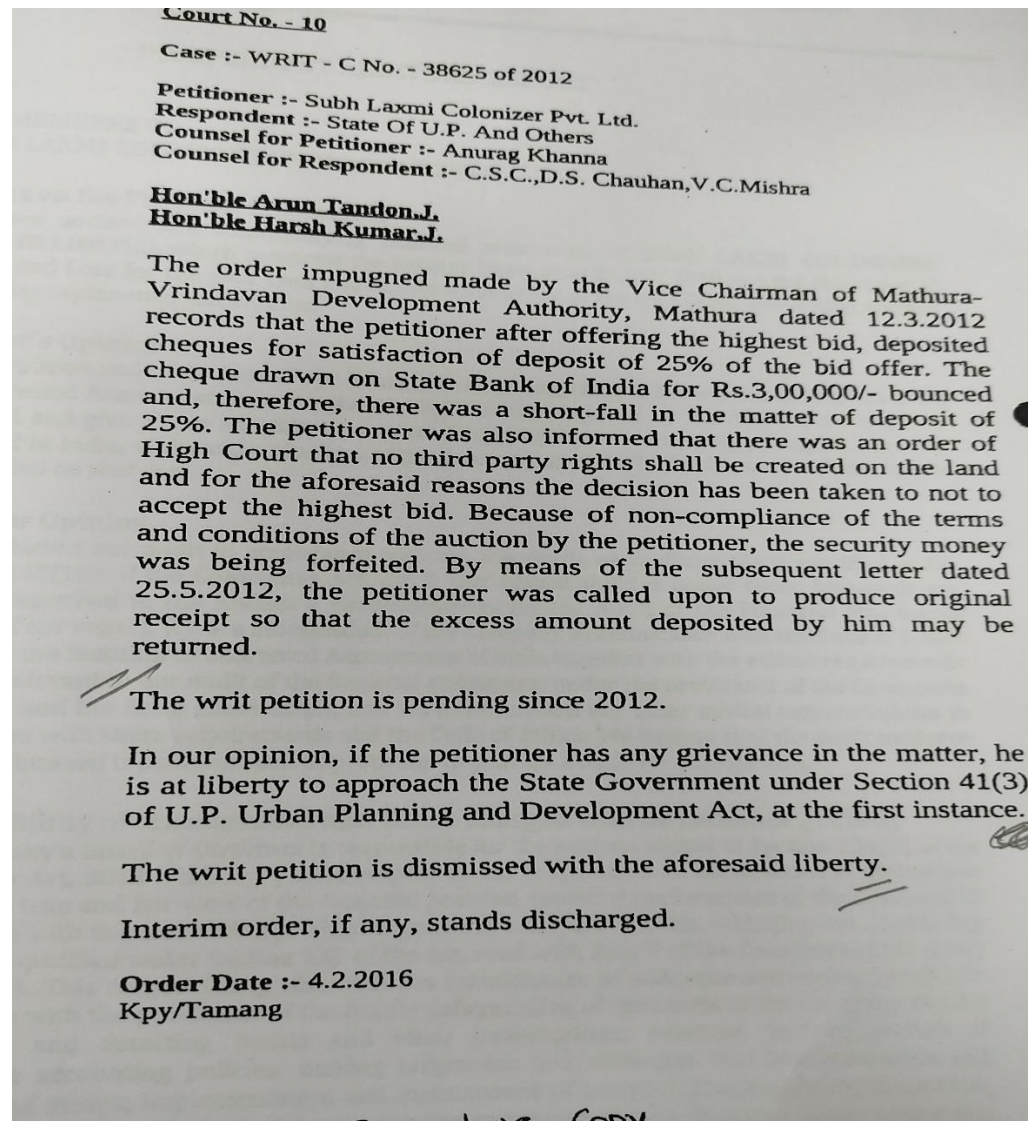
(Director)
 DIN - : 01028182

(Director)
 DIN - : 00058309

Certified true copy

- f) The only important aspect is the Advance under the heading 'Non-Current Assets' given to MVDA of Rs. 71 lakh appearing in the books up to 31.03.2019 duly audited by Chartered Account – D.Mangla & Associates FRN – 030756N M.No.539744 Darpan Mangla-partner, is a point for consideration, apart from this the State Government is to look into the aspect of refunding certain amounts paid by this firm towards the bid other than the security deposit which is apparently clear from the order of the Hon'ble High Court of Judicature at

Allahabad appearing at page no. 58 of the Appeal Paper book as depicted below:



- g) No doubt, the Company has taken certain long term borrowings from the 'Director' and certain other companies as depicted below as appearing from Audited Balance Sheet as at 31st March, 2019 (Page 65):

3(2) RESERVE AND SURPLUS

Particulars	As at 31st March	As at
	2019	31st March 2018
	Amount in Rs.	Amount in Rs.
Surplus		
Opening Balance		
Add: During the year		
Add: Previous year adjustments	(17,542.00)	(7,745.00)
Total		(9,797.00)

3(3) Long-term borrowings

Particulars	As At 31st March 2019	As At 31st March 2018
	Amount (Rs.)	Amount (Rs.)
Unsecured Loans		
Ashok Kumar Gupta		
Rakesh Kumar Gupta	3,63,000.00	3,63,000.00
Parmod Kumar Gupta	3,63,500.00	3,63,500.00
Tarun Gupta	7,10,000.00	7,10,000.00
Vipul Goyal	7,23,000.00	7,23,000.00
Reeta Gupta	3,000.00	3,000.00
Mahesh Mittal	4,03,000.00	4,03,000.00
Inter Corporate Deposit	3,000.00	3,000.00
Maak Softech P.Ltd.		
Maxworth Buildcon P.Ltd.	6,00,000.00	6,00,000.00
Unique Probulkd Pvt.Ltd.	4,10,000.00	4,10,000.00
Rose Wood Buildwell Private Ltd.	4,000.00	4,000.00
Sethi Promoters P. Ltd.	12,80,000.00	12,80,000.00
Total	64,62,500.00	64,62,500.00

3(3)A Advance against Property

Particulars	As At 31st March 2018	As At 31st March 2017
	Amount (Rs.)	Amount (Rs.)
Mahesh Mittal	2,20,000.00	2,20,000.00
Mahesh Mittal HUP	5,00,000.00	5,00,000.00
Total	7,20,000.00	7,20,000.00

3(4) Other Current Liabilities

Particulars	As At 31st March 2019	As At 31st March 2018
	Amount (Rs.)	Amount (Rs.)
a. Other payables		
Audit Fee	20,000.00	15,000.00
Total	20,000.00	15,000.00

For and on behalf of Board of Directors

Ajay Kumar Gupta
(Director)
DIN - 101029182

Ashok Kumar Gupta
(Director)
DIN - 100958309



h) It has also taken advance against the property from two persons as appearing in their audited Balance Sheet as at 31st March, 2019 (page No. 65).

- i) All these reflect that the company is to pay back all these liabilities and also to ensure the recovery of its money from MVDA amounting to Rs. 71 lakh.

This Tribunal has held in CA(AT) No. 290 of 2019 decided on 20.01.2020 Khetan Granite Pvt.Ltd. Vs. Office of RoC, Jharkhand held that where the Company has non-current assets and current assets having substantial value then it cannot be said that the Appellant company is not carrying any business or operation.

Similarly, in CA(AT) No. 203 of 2019 decided on 12.12.2019 in Insuflex Ind Pvt. Ltd Vs. ROC, Maharashtra and ors. has held that if the circumstances are only non-filing of Financial Statement and returns and if there is no non-compliant against the Appellant company and if it has been strike off, then this Tribunal was of the view that the order of the NCLT is not sustainable in law and it would “just” that the name of the company be directed to be restored. The Companies Act, 2013 elaborately deals on the subject vide Section 248 & 252 of the Companies Act, 2013. For brevity and clarity, the same is reproduced below:

“Section 248: Power of Registrar to remove name of company from register of companies. 248. (1) Where the Registrar has reasonable cause to believe that—

(a) a company has failed to commence its business within one year of its incorporation 1 [or];

*(b) 2 [***]*

(c) a company is not carrying on any business or operation for a period of two immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant company under 3 [section 455; or]

[(d) the subscribers to the memorandum have not paid the subscription which they had undertaken to pay at the time of incorporation of a company and a declaration to this effect has not been filed within one hundred and eighty days of its incorporation under sub-section (1) of section 10A; or

(e) the company is not carrying on any business or operations, as revealed after the physical verification carried out under sub-section (9) of section 12.]

he shall send a notice to the company and all the directors of the company, of his intention to remove the name of the company from the register of companies and requesting them to send their representations along with

copies of the relevant documents, if any, within a period of thirty days from the date of the notice.

(2) Without prejudice to the provisions of sub-section (1), a company may, after extinguishing all its liabilities, by a special resolution or consent of seventy-five per cent. members in terms of paid-up share capital, file an application in the prescribed manner to the Registrar for removing the name of the company from the register of companies on all or any of the grounds specified in sub-section (1) and the Registrar shall, on receipt of such application, cause a public notice to be issued in the prescribed manner: Provided that in the case of a company regulated under a special Act, approval of the regulatory body constituted or established under that Act shall also be obtained and enclosed with the application.

(3) Nothing in sub-section (2) shall apply to a company registered under section 8.

(4) A notice issued under sub-section (1) or sub-section (2) shall be published in the prescribed manner and also in the Official Gazette for the information of the general public

(5) 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 its name from the register of companies, and shall publish notice thereof in the Official Gazette, and on the publication in the Official Gazette of this notice, the company shall stand dissolved.

(6) The Registrar, before passing an order under sub-section (5), shall satisfy himself that sufficient provision has been made for the realisation of all amount due to the company and for the payment or discharge of its liabilities and obligations by the company within a reasonable time and, if necessary, obtain necessary undertakings from the managing director, director or other persons in charge of the management of the company:

Provided that notwithstanding the undertakings referred to in this sub-section, the assets of the company shall be made available for the payment or discharge of all its liabilities and obligations even after the date of the order removing the name of the company from the register of companies.

(7) The liability, if any, of every director, manager or other officer who was exercising any power of management, and of every member of the company dissolved under sub-section (5), shall continue and may be enforced as if the company had not been dissolved.

(8) Nothing in this section shall affect the power of the Tribunal to wind up a company the name of which has been struck off from the register of companies.”

“Section 252 - Appeal to Tribunal.

252. (1) Any person aggrieved by an order of the Registrar, notifying a company as dissolved under section 248, may file an appeal to the Tribunal within a period of three years from the date of the order of the Registrar and if the Tribunal is of the opinion that the removal of the name of the company from the register of companies is not justified in view of the absence of any of the grounds on which the order was passed by the Registrar, it may order restoration of the name of the company in the register of companies:

Provided that before passing any order under this section, the Tribunal shall give a reasonable opportunity

of making representations and of being heard to the Registrar, the company and all the persons concerned : Provided further that if the Registrar is satisfied, that the name of the company has been struck off from the register of companies either inadvertently or on the basis of incorrect information furnished by the company or its directors, which requires restoration in the register of companies, he may within a period of three years from the date of passing of the order dissolving the company under section 248, file an application before the Tribunal seeking restoration of name of such company.

(2) A copy of the order passed by the Tribunal shall be filed by the company with the Registrar within thirty days from the date of the order and on receipt of the order, the Registrar shall cause the name of the company to be restored in the register of companies and shall issue a fresh certificate of incorporation.

(3) If 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 subsection (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.”

- j) From the above discussions, it is very much clear that the Appellant Company has filed the ‘Balance Sheet’ till 31.03.2015. What it has committed a mistake that the Company has not filed the ‘Balance Sheet’ for Financial Year 2015-16, 2016-17 till notice was issued in Form STK-1 on 25.05.2018 by the Registrar for Removal the name of the Company from Registrar of Companies. Simply non-filing of Financial Statement cannot be a ground for striking off the name of the company, if the company is otherwise in the business or

operation of the Company. For a Real Estate Company, it is not possible always to generate the income on year to year basis. It is very much clear that this company applied against the bid of MVDA and it could not succeed. It is also very much clear that this company has given an advance of Rs. 71 lakh to the MVDA as the same is reflected in the Balance Sheet on 31.03.2017, 31.03.2018 & 31.03.2019 duly signed by the Board of Directors - Mr. Ajay Kumar Gupta and Mr. Ashok Kumar Gupta and counter signed by the Chartered Accountant- D.Mangla & Associates FRN – 030756N – Darpan Mangla, Partner M.No.539744 and the same is also reflected in the Balance Sheet on 2016-17 which has been signed by these two Directors and the Chartered Accountant - FRN-01253N for SAGC And Associates – Sanjeev Kumar Garg (Partner) M.No.093936.

- k) In the past also, this Tribunal has taken a soft attitude for restoration of the name of the company, perhaps keeping in mind the growth of the economy. The Income tax department also did not inform any negative input about the company. Although, they have not submitted their reply in writing but in the oral submissions on specific query, they did not spell out any negative input about the company. The ROC is also dissatisfied only on the limited ground

that the Appellant company has not filed their Balance Sheet and hence have assumed that they are not doing any business or operation. This power, in any case, always vest with the ROC to take appropriate measures under Section 248, if the RoC has the reasonable cause to believe certain events as enumerated in Section 248 (1) of the Act.

- l) The RoC is empowered to review this Company even after few years and they can take appropriate measures in accordance with the provisions of the Act. So far as the present case of the Appellant is concerned, simply, because of the failure to file a Financial Statement and returns that too only of the two years should not result the company into striking off their name. These are small companies, business is erratic. This company is having the share capital hardly Rs.1 lakh as it looks from their Balance Sheet. It has given advance to MVDA of Rs. 71 lakhs naturally by obtaining loans and advances from the Directors and others so that at a later stage they can go for the Real Estate Business.
- m) In view of the facts and circumstances of the case, it seems fit and proper to restore the name of the company under the umbrella of grounds **“Just”** to restore the name of the company and hence we are passing the following directions:

(1) The Impugned order dated 21.12.2020 is quashed and set aside.

(2) The name of the Appellant Company shall be restored to the

Register of Companies subject to the following compliances:

- i. The Appellant shall pay costs of Rs. 4,00,000/- (Rupees Four lakh only) to the Registrar of Companies, New Delhi within 30 days.
- ii. The Appellant will also deposit any dues towards sales tax dues with the concerned department, if any, and produce the proof of the same before the ROC, Delhi within 45 days.
- iii. Within 45 days of the restoration of the company's name in the register maintained by the RoC, the company will file all their Annual returns, Financial Statements & balance sheet profit and loss account for the period ending 2015-16 to date i.e. 2021-22.
- iv. The Company will also pay requisite charges/ fee as well as late fee/charges as applicable.
- v. In spite of present orders, RoC will be free to take any other steps punitive or otherwise under the Act for non-filing/ late filing of statutory returns/documents against the company and Directors.

n) The Appeal is accordingly allowed. No order as to costs.

[Justice M.Venugopal]
Member (Judicial)

(Dr. Ashok Kumar Mishra)
Member(Technical)

25th May, 2022

New Delhi

Raushan.K