NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) No.134 of 2018

[Arising out of Order dated 03.04.2018 passed by National Company Law Tribunal, Bengaluru Bench in CP 35/BB/2018]

IN THE MATTER OF:	**Before NCLT**	**Before NCLAT**
Cayenne Developments Private Limited 44/54, 30th Cross, Tilak Nagar, Jayanagar Extention, Bangalore – 560041	Original Petitioner	Appellant
Versus		
Registrar of Companies, Bangalore Kendriya Sadan, IInd Floor, E Wing, Koramangala, Bangalore – 560034	Original Respondent	Respondent

For Appellant: Ms. Rohini Musa and Shri Badri Vishal, Advocates

For Respondent: Shri Gaurav Rohilla, Advocate (ROC, Bangalore)

J U D G E M E N T

(08th January, 2019)

A.I.S. Cheema, J. :

1. The Appellant filed CP 35/BB/2018 under Section 252 ('Appeal' as per the Section) of the Companies Act, 2013 ('new Act', in short) before National Company Law Tribunal, Bengaluru Bench seeking restoration of the name of the Petitioner Company in the Register of Companies. The said

Petition came to be dismissed by NCLT on 3rd April, 2018. Hence the present Appeal.

2. We have heard Counsel for both sides. It would be appropriate to refer to developments as seen in the matter for appreciation of the claim, which is being made by the Appellant and which is being challenged by the Respondent – ROC.

3. Learned Counsel for the Appellant submitted that in the Companies Act, 1956 ('old Act', in short), there were guidelines for Fast Track Exit mode of defunct companies under Section 560 of the old Act, which was dated 7th June, 2011.

4. On 29th August, 2013, new Act came into force with Section 248 dealing with power of the Registrar to remove name of Company from Register of Companies. Section 248 needs to be reproduced and the same are as under:-

> **248. Power of Registrar to remove name of company from register of companies.—** (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; [or]
>
> [* * * * *]
>
> (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 section 455,

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."

Thus, under Sub-Section (1), if there was failure to commence business or if the company was not carrying on any business or operation for a period of two immediately preceding financial years and the Company had not applied for dormant status, the Registrar could initiate action. Sub-Section (2) gave right to the Company to itself apply for removing the name of the Company from Register of Companies on grounds mentioned in Sub-Section (1), after doing compliance as mentioned. Sub-Section (4) of Section 248 provides for a Notice to be issued under Sub-Section (1) or Sub-Section (2) to be published in official gazette for information of the general public and Sub-Section (5) prescribes that at the expiry of the time mentioned in the Notice unless cause to the contrary is shown by the

Company, the Registrar may strike off the name and publish Notice in Official Gazette and the Company shall stand dissolved. Thus, the procedure for removal may initiate under Sub-Section (1) at the instance of Registrar or under Sub-Section (2) voluntarily at the behest of the Company concerned. The culmination would be under Sub-Section (5).

5. On 29.08.2013, when the new Act was enforced, Section 248 was yet to be notified. On 13.12.2016, the Appellant Company passed special Resolution at EOGM held on 13th December, 2016 and resolved as under:-

> "RESOLVED THAT the Company do make an application to the Registrar of Companies, Karnataka in Form STK 2 to strike off the name of the Company from the Register of Companies under section 248 of the Companies Act, 2013."

6. On 26th December, 2016, Section 248 came to be enforced and Ministry of Corporate Affairs issued Notification dated 26th December, 2016 (GSR 1174(E)) published in Gazette of India Extraordinary (Part II Section SEC.3(i)) enforcing "The Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016" (hereafter referred as 'Rules'). These Rules were passed exercising powers conferred by Sub-Sections (1), (2) and (4) of Section 248 read with Section 469 of the new Act. Rule (4) prescribes that application for removal of name of the Company under Sub-Section (2) of Section 248 shall be made in Form STK 2 along with the fee of Rs.5,000/-.

7. As per the Appellant, after passing the Resolution dated 13th December, 2016, the Company wanted to file the same as per STK 2 regarding which the Resolution had been passed, but when the effort was made to file the same on 8th February, 2017, the Form was not available on the website of Ministry of Corporate Affairs. The same became available only on 5th April, 2017 as has now been accepted by ROC in Affidavit dated 27th September, 2018, which has been filed in this Appeal with Diary No.7682. According to the Appellant, as Form STK 2 was not available on the website, the Appellant uploaded the Resolution passed in EOGM on 8th February, 2017 in Form MGT 14, which was available for filing Resolutions and Agreements under Section 117 of the new Act. This includes filing of special Resolutions with the ROC. The learned Counsel for the Appellant submitted that in the circumstances, the Appellant could not be faulted with.

Advocate for Appellant submitted that after such Form was uploaded with the ROC on 8th February, 2017 (as can be seen from Annexure – 6 of the Appeal Page – 54), the ROC issued Notice under Section 248(1) on 27th March, 2017. Copy of the Notice is available as Annexure – 1 with Affidavit of Respondent (Diary No.5674), which informed the Appellant that the Company was not carrying on business or operation for a period of 2 immediately preceding financial years and has not made any application within such period for obtaining the status of dormant company under Section 455 and thus, the ROC stated that he intended to remove the name

of the Company from the Register. Opportunity was given to the Appellant to send representation. Learned Counsel for the Appellant stated that in response to such Notice, the Appellant sent Reply on 27th April, 2017 (Annexure 8 – Page 58). The Reply reads as under:-

> "This is with reference to your notice dated 17.03.2017 stating that pursuant to sub-section (1) and (2) of section 248 of the Companies Act, 2013 since the Company is not carrying on any business or operation for a period of five immediately preceding financial years and has not applied for the status of a dormant Company under Section 455, you intend to remove the name of the Company from the register of companies unless a cause to the contrary is shown.
>
> We hereby state that the Company is indeed not carrying on any business from the past 5 years and has not in the meantime applied for the status of dormancy.
>
> Further, we would draw your kind attention to the following facts:
>
> 1. The Company does not have any assets or liabilities;
> 2. The Company does not have any bank account as on date;
> 3. The Company has no statutory liabilities;
> 4. No inquiry, technical scrutiny, inspection, or investigation is ordered or pending against the Company;
> 5. No prosecution or any compounding application for any offence under the Act or under any of the other Acts is pending against the Company or against the undersigned;
> 6. The Company is neither listed nor delisted for non compliance of listing agreement;
> 7. The Company is not a Company incorporated for charitable purposes under section 8 of the Companies Act, 2013 or section 25 of the Companies Act, 1956;

> 8. The Company does not have any management disputes or there is no litigation pending with regard to management or Shareholding of the Company;
>
> In the given circumstances we are unable to show any cause to the contrary and we, therefore, humbly request you to take such steps as envisaged by the provisions of Section 248(5) of Companies Act, 2013.
>
> This representation is made by all the Directors of the Company."

8. The learned Counsel for the Appellant stated that the Appellant had already submitted Resolution dated 13th December, 2016 to the ROC by fling the same on 8th February, 2017, and then the Company had given such Reply and met requirements under Sub-Section (2) as well as Sub-Section (6). The Counsel accepted that in the Reply, the Company should have mentioned regarding the Resolution taken on 13th December, 2016 and that it is already filed with ROC but, however, she claimed that as the Resolution had already been filed and the Notice of ROC (Annexure – 1 Diary No.5674) itself mentioned that it was under Section 248 - Sub-Sections (1) and (2) of the new Act, the Appellant bona-fide felt that compliances were complete. She argued, as the consequence was going to be same of passing of Orders under Sub-Section (5) of Section 248 and the Appellant was not expecting adverse consequences. She submitted that the ROC, however, passed Orders on 17.07.2017 (Annexure 9 – Page 59) and dealt with the Appellant along with various members of other Companies to treat the strike off, of the Company under Sub-Section (5) read with Sub-Section (1) of Section 248 without dealing with the Reply of

the Appellant, which had been filed on 27th April, 2017. She stated that the consequence was that the Directors of the Company were struck by disqualification under Section 164 of the new Act. It is the case of the Appellant that in the circumstances, the Directors of the Appellant filed Writ Petition 45742 – 45743 / 2017 in the High Court of Karnataka, Bengaluru which by Orders dated 11th October, 2017 stayed the Orders of the ROC with regard to the effect of disqualification.

9. The Counsel for the Appellant stated that the Writ Petition is still pending. According to the Appellant, when such developments were taking place the Government came up with a scheme called "Condonation of Delay Scheme, 2018" ("Scheme of 2018", in short). The Ministry of Corporate Affairs issued General Circular 16/2017 dated 29.12.2017. The copy of the Circular has been filed (Annexure 13 – Page 68). It appears that the scheme was brought in view of the provisions of Section 164 of the new Act and the fact that number of affected persons had filed Writ Petitions before various High Courts seeking relief from disqualification with a view to give opportunity for non-complaint defaulting Companies to rectify the default, in exercise of powers conferred under Sections 403, 459 and 460 of the new Act. The Government decided to introduce the scheme. Clause 1 of the scheme reads as under:-

> "1. The scheme shall come into force with effect from 01.01.2018 and shall remain in force up to 31.03.2018."

Clause 3 is as follows:

> "**Applicability: -** This scheme is applicable to all defaulting companies (other than the companies which have been struck off/whose names have been removed from the register of companies under section 248(5) of the Act). A defaulting company is permitted to file its overdue documents which were due for filing till 30.06.2017 in accordance with the provisions of this Scheme."

10. Thus, as per Clause 3, the scheme was to be applicable to defaulting companies other than companies which had been struck off. Clause 4 dealt with "Procedure to be followed for the purpose of scheme". Clause 4(1) i) to iv) relate to defaulting companies whose names have not been removed from register of Companies. Appellant relies on what is referred as a saving clause which reads as under:-

> "v) In the event of defaulting companies whose names have been removed from the register of companies under section 248 of the Act and which have filed applications for revival under section 252 of the Act up to the date of this scheme, the Director's DIN shall be re-activated only by NCLT order of revival subject to the company having filing of all overdue documents."

As has been noticed above, the scheme was stated to have come into effect from 1st January, 2018 and was to remain in force up to 31.03.2018. It is not disputed that the scheme was further extended upto 30th April, 2018 vide another General Circular No.2/2018 issued by Ministry of Corporate Affairs on 28th March, 2018. Sub-Clause 'v' - reproduced above gave a breather to defaulting companies whose names had already been

removed and who had filed applications for revival under Section 252 of the new Act, up to the date of the scheme. It is stated that the Appellant had filed the Petition under Section 252 before NCLT on 22nd January, 2018. Thus, it is the case of the Appellant that when the Appellant had filed the Petition under Section 252 and also relied in the petition, on the Condonation of Delay Scheme of 2018, there was no reason why the NCLT should not have looked into the scheme and should not have given benefit of the scheme to the Appellant.

11. The learned Counsel for the Appellant relied on the Judgement in the matter of "**Sandeep Singh and Anr. vs. Registrar of Companies and Ors."** [W.P. (C) 11381/2017 & CM 46432-46433/2017] (Annexure 16 – Page – 97) of the Hon'ble High Court of Delhi dated 21.12.2017. The Judgement refers to the Petitioners in that Writ Petition making grievance relating to disqualification incurred under Section 164(2) of the Act due to the fact that the Company in that matter, had not carried out business for past 3 years and the bank accounts were also not in operation. The Petitioners in that matter claimed benefit of the above Scheme of 2018. In that matter also, the Company had been struck off from the Register of Companies. The Petitioner claimed that they could not seek revival as the Company was not carrying out any business and was liable to be struck off and requested the High Court that they would voluntarily seek dissolution of the Company under Section 242 of the Act, if they get the

opportunity. The Hon'ble High Court in paragraphs – 5 and 6 of the Judgement observed as under:-

> "5. This Court is of the view that since, admittedly, the Company is not carrying out any business and its bank account has not been operated for over three years, the petitioners ought to be provided the benefit of the CODS – 2018. Accordingly, this Court directs as under:-
>
> (a) The petitioners may file all the requisite returns in relation to the Company to avail the CODS – 2018.
>
> (b) The petitioners may also file the necessary resolutions for voluntarily striking off the name of the Company as required under Section 248(2) of the Act.
>
> (c) The petitioners would also make a necessary application under CODS-2018 alongwith the requisite charges.
>
> (d) The aforesaid documents and applications will not be submitted online but in hardcopies to the Registrar of Companies.
>
> 6. The Registrar shall scrutinize the same, and if the same are found to be otherwise in accordance with Section 248(2) of the Act, the petitioners would be granted the benefit of the CODS – 2018. <u>The removal of the Company from the Register under Section 248(1) of the Act would be deemed as striking off the Company under Section 248(2) of the Act</u>, and the petitioner's application under CODS – 2018 would be sympathetically considered by the Registrar."
>
> [Emphasis supplied]

12. Thus, it can be seen that the Hon'ble High Court gave opportunity for the necessary compliances to be done before the ROC and directed the ROC to examine giving benefit of the Scheme of 2018 and subject to the

same, the removal was to be deemed as striking off under Section 248(2) of the new Act. Some more directions were also given.

13. The above Judgement appears to have been followed by the Hon'ble High Court of Delhi in yet another matter in the case of **"Rajan Puri and Anr. versus Registrar of Companies and Ors."** [W.P. (C) 1142/2018, CM APPL.4801 & 4802/2018] (Annexure 17 – Page 101).

14. Relying on the above Judgements, the learned Counsel for the Appellant submitted that the ROC should not have struck off the company without taking into consideration the fact that the Company had already submitted Resolution for striking off under Section 248 of the new Act. The Company had already given necessary declarations in the Reply dated 27th April, 2017 (Page 58) regarding extinguishing liabilities as required under Section 248(2). Further declarations required were given in Reply to Notice STK 1. It is stated that when the Appeal was filed, this Tribunal had on 2nd July, 2018 passed the following Order:-

> "Learned Counsel for the appellant submits that in view of the orders dated 26th April, 2018, the appellant have tendered the necessary documents in physical forms like Annual Returns and Balance Sheet to the ROC alongwith Demand Drafts. Ms. V. Santoshi Jagirdar, Deputy ROC, Karnataka states that ROC no more receives physical documents. Learned counsel for the appellant states that DIN No. of the concerned Directors have been suspended and as such they have to do the compliances by physical form.
>
> The ROC, Karnataka may accept the documents filed in physical form and DD subject to the decision of this Appeal.

> The Deputy ROC, Karnataka states that the DDs are about to expire. Counsel for the appellant states that she will replace the DD."

The learned Counsel stated that in view of such Order passed, the Appellant has already filed the necessary documents as would be necessary to be filed under the Scheme of 2018. It has been argued that in the circumstances of the present matter and looking to the facts and compliances done, the striking off under Sub-Section (5) of Section 248 should be read with Sub-Section (2) of Section 248 instead of Sub-Section (1) of Section 248.

15. We have heard the learned Counsel for the Respondent – ROC also. It has been argued by him that the Appellant Company was given opportunity when Notice STK 1 was sent. If earlier Form STK 2 was not available, the Company should have filed the same when the Form became available. The Counsel supported the Impugned Orders passed by NCLT that when the Company was not functioning and was not in business, the striking off was correctly done. According to the Counsel, the striking off of the Company based on Section 248(1) was correct and the same cannot be converted into an action under Section 248(2).

16. At the time of arguments, we asked the learned Counsel for the ROC that if all the due and necessary documents have been filed. The Counsel submitted that the same have been filed but the Affidavit of ROC is that

the same were filed by misguiding the office of ROC as mentioned in Affidavit filed with Diary No.5674.

17. When this Appeal was filed, this Tribunal on 26th April, 2018 while issuing Notice directed:-

> "During the pendency of the appeal the applicant may apply before the competent authority for getting the benefit of the scheme within the period prescribed, with intention of the competent authority that they will avail the benefit of scheme, if appeal is allowed in their favour."

It needs to be recalled that on that date also the benefit of the Scheme of 2018 was available as the period had been extended to 30th April, 2018 by General Circular No.2/2018 issued by Ministry of Corporate Affairs on 28th March, 2018. The Appellant sent letter dated 27th April, 2018 to the Respondent, copy of which has been filed with Diary No.4862. The Appellant referred to the dismissal of the Petition by NCLT; the filing of the Appeal; and passing of the above Order dated 26th April, 2018. There appears to be typing mistake in the Appeal number as the letter mentioned the Company Appeal to be having number 124 of 2018 instead of 134 of 2018. By the letter and referring to the Order passed, the Appellant sought benefit of the scheme of 2018 from the Registrar of Companies. The letter mentioned:-

> "The matter now stands posted on 15.05.2018. The copy of the Order has been applied for and in order to avoid any delay in filing, since the time period prescribed on availing the benefit expires on April 30, 2018, by way of the present letter we are annexing the

> relevant materials required for availing the said Scheme. We have also calculated the fees and penalty applicable and are herewith paying the same. We also undertake and are ready to pay any penalty and fees levied by this Hon'ble Authority.
>
> In light of the above, and pursuant to the Order passed by the Hon'ble NCLAT please permit us to avail the benefit of Condonation of Delay Scheme, 2018 and do the needful."

By another letter dated 1st May, 2018, the Appellant forwarded copy of the Order dated 26th April, 2018. The copies of the letters bear stamps of receipt from the office of ROC.

18. ROC filed Affidavit dated 29th June, 2018 (Diary No.5674) and it has been argued for the ROC that as the Appellant had not filed balance sheet or Annual Returns since the time of incorporation till 2015-2016, and so the ROC believed that the Company was not carrying on any business or operation and thus, Form STK 1 was sent on 17th March, 2017. Copies were also sent to the Directors. The Affidavit claims that no cause was shown by the Appellant to the physical notices or the Notice on website till 21.06.2017 and so the ROC proceeded to strike off the name of the Company on 17.07.2017. The Notice STK 7 has been annexed with the Affidavit. The Affidavit mentions that after the Company was struck off, the Directors moved the High Court of Karnataka and in view of the directions of the High Court, DINs of the Directors have been activated. Referring to the dismissal of the Petition by NCLT, the Affidavit mentions:-

> "11. The petitioner Company has submitted a letter dated 27/4/2018 addressed to this office, stating that the Hon'ble NCLAT, New Delhi, passed an order dated 26.04.2018 permitting the company to avail COD Scheme – 2018. The Company has submitted physical copies of Annual Return & Balance Sheets together with Demand Drafts of i) DD No.265320 dt 27/4/2018 for Rs.30,000/-, ii) DD No.265319 dt 27/-4/2018 for Rs.31,200/- and iii) DD No.265325 dt 30/04/2018 for Rs.20,800/-. The said order copy was not submitted along with the letter dt 27/04/2018 but was later submitted through email only on 26/06/2018. As per the interim order of this Hon'ble Tribunal dated 26.04.2018 as submitted by the company, it has observed that there was no direction to the appellant to submit the physical copies of the Annual Return and Balance Sheet with the demand drafts/fees to RoC. Inspite of it, the appellant had filed those documents with this office with an intention to misguide this office. Therefore this Hon'ble Tribunal, may permit RoC to return forthwith the documents submitted by the appellant along with fees (DDs) to the appellant under acknowledgement before this Hon'ble Tribunal."

The learned Counsel for the Respondent relied on this paragraph to claim that the Appellant misguided the office to submit the documents and file demand drafts. Thus, the documents have been filed and fees have been paid is not disputed, but the ROC claimed that the Appellant had misguided his office. The Affidavit of the ROC claimed that there is another General Circular dated 17.05.2018, of which Appellant can avail benefit.

19. With regard to the above Affidavit of ROC, we have already noticed the response which was filed by the Appellant on 27th April, 2017, copy of which has been filed at Page – 58 of the Appeal, which specifically referred

to the Notice sent by ROC and accepted that they were not carrying on any business and informed ROC regarding not having assets or liabilities or pendency of any enquiry, etc. Page – 58 of the Appeal shows receipt of the Reply by ROC on 27.04.2017. Thus, the Affidavit of ROC is not correct that no Reply was given to STK 1. As regards, the claim that physical copies were submitted without there being Order of this Tribunal, this Affidavit of ROC dated 29th June, 2018 was filed on 02.07.2018 in the Registry. On 02.07.2018, when the matter had come up before us, we passed the following Order:-

> "Learned counsel for the appellant submits that in view of the orders dated 26th April, 2018, the appellant have tendered the necessary documents in physical forms like Annual Returns and Balance Sheet to the ROC alongwith Demand Drafts. Ms V. Santoshi Jagirdar, Deputy ROC, Karnataka states that ROC no more receives physical documents. Learned counsel for the appellant states that DIN No. of the concerned Directors have been suspended and as such they have to do the compliances by physical form.
>
> The ROC, Karnataka may accept the documents filed in physical form and DD subject to the decision of this Appeal.
>
> The Deputy ROC, Karnataka states that the DDs are about to expire. Counsel for the appellant states that she will replace the DD."

It would not be appropriate to stand on technicalities when the record shows that the Appellant, since beginning itself, wanted to move under Sub-Section (2) of Section 248 and did pass Resolution and submitted it on 08.02.2017. It is easy for the Respondent to say (see

Affidavit - Diary No.7682) that the Appellant should have filed the Resolution under STK 2 when it became available in April, 2017 without saying as to why the citizens should have been put to the difficulties if Section 248 was enforced on 26th December, 2016 and still Form STK 2 was not made available on the website.

20. When this matter was being argued before us on 24th October, 2018, considering the record and submissions, we had recorded:-

> "In the course of arguments, it has come up and the learned Counsel for the ROC seeks time to take instructions from ROC whether in the facts and circumstances of the present matter, the present striking off of the Company can be converted from an Order under Sub-Section (5) of Section 248 into an Order on the basis of Sub-Section (2) of Section 248 of the Companies Act, 2013."

20.1 In response, the learned ROC (Respondent) filed Affidavit dated 2nd November, 2018 (Diary No.8117) claiming that the action had been taken under Section 248(1) of the new Act and since the entire action of striking off had already been concluded, it will not be possible to convert the said action of striking off under Section 248(2). The Affidavit mentioned that in the event, the Company is revived by this Tribunal, then upon filing of all overdue documents and complying with direction, the Petitioner Company can apply for striking off under Section 248(2) of the new Act, if they so desire.

21. We have gone through the Impugned Order. The Impugned Order noted the rival claims and although the scheme was also pointed out to the NCLT, the final part of the Impugned Order simply recorded that the Appellant had on 13.12.2016 itself resolved that application in prescribed form to strike off the name of the Company needs to be filed and observed that it was clear from the report of ROC that the Company was not carrying on business or any operations when the name was struck off and thus, NCLT held that there was no just ground to order restoration of the name of the Company. We find that the NCLT did not consider as to what would be the effect, if the Order remains one of the basis of Section 248(1) and what would be the effect, if it were to be on the basis of Section 248(2). When the scheme was still available, the NCLT could have permitted steps as we have noticed in the matter of "Sandeep Singh" (supra).

22. We have already taken note of special Resolution passed by the Appellant Company on 13th December, 2016, which was filed with the ROC on 8th February, 2017 (Annexure 7 Page 57) and the Reply of the Appellant Company dated 27.04.2017 (Annexure 8 Page 58). The declarations given by the Appellant take care of the requirements of Sub-Section (2) of Section 248 that Company may after extinguishing all its liabilities, by a special Resolution, file an application in the prescribed manner to the Registrar for removing the name of the Company from the Register of Companies. Material for satisfaction under Sub-Section (6) of Section 248 was also available to ROC. When the Appellant filed the Resolution with the

Registrar of Companies on 8th February, 2017, if the Form STK 2 was not available to the public, the Appellant cannot be held responsible and in the circumstances, it would not be appropriate for the Respondent to stand on technicalities and resist efforts of the Appellant to take benefit of the provisions under Section 248(2) and even the Scheme of 2018. There is no reason why the Respondent should not have approached the matter more sympathetically. If the Judgement of the Hon'ble Delhi High Court in the matter of "Sandeep Singh vs. ROC" (supra) is seen, paragraphs – 5 and 6 of which we have reproduced above, the compliances which the Hon'ble High Court sought were filing of requisite returns; filing of necessary resolutions for voluntary striking off; filing of necessary application under the Scheme with the requisite charges; and filing the documents and applications in hard copies. Hon'ble High Court directed the ROC in that matter to consider giving benefit under Scheme of 2018 and observed, "The removal of the Company from the Register under Section 248(1) of the Act would be deemed as striking off the Company under Section 248(2) of the Act." The Hon'ble High Court asked ROC to consider the matter sympathetically. In the present matter, we already have the compliances in place and the fees are stated to have been paid by demand drafts. The special Resolution is already there. The filings and application are stated to have been filed. In such situation, it would be appropriate to order the striking off, of the Company to be on the basis of Sub-Section 248(2) instead of Section 248(1). We proceed to pass the following order:-

ORDER

The Appeal is allowed. The Impugned Order is set aside. For reasons stated above, we declare that the striking off, of the Appellant Company would be treated to be on the basis of Section 248(2) of the Companies Act, 2013 (instead of under Section 248(1) of the Act).

No orders as to costs.

[Justice A.I.S. Cheema]
Member (Judicial)

[Balvinder Singh]
Member (Technical)

/rs/nn