

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

**Company Appeal (AT) No. 255 of 2017**

**IN THE MATTER OF:**

**Akash Ganga Builders Private Limited  
B-20, Ansal Chamber-I, Bikaji Cama Place,  
New Delhi**

**...Appellant**

**Vs**

**Registrar Of Companies, NCT of Delhi & Haryana  
4<sup>th</sup> Floor, IFCI Tower, 61, Nehru Place  
New Delhi-110019**

**....Respondent**

**Present:**

**For Appellant:                    Mr. Soumya Dutta, Advocate**

**For Respondent:                Ms. Aparna Mudiam, Assitant ROC**

**ORDER**

**24.11.2017:** Heard counsel for the appellant and the assistant ROC for respondent Registrar of Companies. Both the sides have filed affidavits in compliance of orders dated 3<sup>rd</sup> November, 2017. It can be seen that the appellant company was on earlier occasion struck off by the Registrar of Companies for non filing of annual returns and balance sheets for 13 years, under section 560(6) of The Companies Act, 1956 ("Act" in brief). The appellant moved the Hon'ble High Court of Delhi and the High Court passed orders to the following effect:

*"1. This petition has been filed under Section 560(6) of the Companies Act, 1956 ('Act') seeking restoration of Akash Ganga*

*Builders Private Limited (hereafter referred to as 'Petitioner company').*

*2. The reply to the said petition dated 29<sup>th</sup> April, 2013 of the Registrar of Companies ("ROC") has been perused. It is pointed out that the Petitioner company has not filed its annual returns and balance sheets from 2000 to 2012 and other statutory forms.*

*3. In view of the fact that the annual returns and balance sheets have not been filed by the Petitioner company for a period of nearly thirteen years. Learned counsel for the Petitioner states that the Petitioner company would pay additional cost along with filing fee, as applicable, to the ROC against filing of the abovesaid documents.*

*4. Having considered the above submissions, it is directed that subject to the petitioner paying Rs. 20,000/- as costs to the Central Government within six weeks, the name of the Petitioner Company shall stand restored and its status would be changed from 'inactive' to 'active'. Within eight weeks thereafter, the Petitioner will file all its statutory documents, including the annual returns and balance sheets from 2000 to 2012 and other statutory forms by filing the additional fee, as applicable, on the actual date of filing in terms of the Act and the Rules thereunder."*

Both sides agree that after the above order was passed, the status of the appellant was changed from 'inactive' to 'active'. It is stated by counsel for appellant that paid up capital was enhanced to Rs. 1,50,000/- in March 2013. The affidavits filed show that the appellant filed some annual returns and balance sheets of some years. The affidavit of appellant itself shows that all the returns and balance sheets have not been filed. As per affidavit dated 20.11.2017 of ROC, appellant has not filed Annual Returns for the period 2008 to 2011. Thus the order of the High Court was not complied fully, and in the given time.

The respondent Registrar of Companies had given another notice dated 11<sup>th</sup> February, 2015 (Pg. 48 of Paper Book) still complaining about non enhancement of the minimum paid up capital and non filing of annual returns for 2008 to 2011. Other defaults were also pointed out. Subsequently again the company was struck off on 29.05.2015.

The appellant moved learned National Company Law Tribunal, New Delhi and after hearing the parties, for reasons recorded NCLT rejected the petition finding that statutory compliances were not there, vide Impugned Order dated 30.06.2017. Hence this appeal.

Looking to the fact that the annual returns for the orders from 2008 to 2011 have admittedly not been filed till now, it would be difficult to find fault with the action of Respondent and the impugned order challenged

before us. The learned counsel for the appellant is submitting that because of the subsequent order of the Registrar of Companies striking off the Appellant, the appellant had not been able to file the returns and take further steps. It is also stated that there are only two shareholders and two directors in the company out of which one has expired and for want of DIN number of the other director the compliances could not be done.

The affidavit dated 16.11.2017 of the appellant shows blame being put on the web-site and CA also who could not find ways to help appellant in tiding over the difficulties regarding death of a shareholder and non filing of the returns etc. We find that these are matters of day to day functioning which the company has to itself deal with. Such excuses for defaults over so many years cannot be accepted. In spite of earlier opportunity given by High Court, Appellant did not learn and do the compliances called for.

The learned assistant ROC says that after the order of the High Court when the appellant was converted from inactive to active, because there was non-compliance continuing, the ROC vide Gazette notification dated 8<sup>th</sup> September, 2015 struck off the name of the appellant in terms of sub section of 5 Section 560 of the Companies Act, 1956. It appears from the impugned order that the appellant moved the NCLT without making out grounds under sub section 6 of Section 560 which required the appellant to show that the Company was at the time of striking off carrying on business or that it is just

that the company be restored to the register. Even now no such material is available on record. No just grounds are made out to restore the appellant. We do not find any reason to interfere in the impugned order and the appeal is dismissed.

No orders to costs.

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

(Justice Bansilal Bhat)  
Member (Judicial)

(Balvinder Singh)  
Member (Technical)

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