
MCA prescribes appellate-procedure for Companies having their name struck off from Register

MCA notifies National Company Law Tribunal (Amendment) Rules 2017 to insert Rule 87A in National Company Law Tribunal Rules, 2016 ('Principal Rules'); As per said Rule, appeal u/s 252(1) or application u/s 252(3) may be filed before the Tribunal in Form No. NCLT 9 against notice of the Registrar for removal of Company name from the register of companies, and a copy thereof shall be served on Registrar and on such other persons not less than 14 days before date fixed for hearing; Where Tribunal directs restoration of Company name, appellant / applicant shall inter alia deliver certified copy of order to the Registrar within 30 days and company shall file pending financial statements and annual returns and comply with requirements of Cos. Act 2013 and Rules thereunder within stipulated time; Application for restoration of Company name by Registrar where the name has been struck-off either inadvertently or on the basis of incorrect information furnished by the company or its directors, shall be filed in Form NCLT 9 and upon hearing, Tribunal may pass appropriate order: MCA Notification

Govt. tightens noose around 'struck off' companies; Inter alia restricts bank accounts operation

MCA issues notice barring any person disqualified u/s 164(2) of Companies Act 2013 from acting as Director during the period of disqualification and from filing any document or application with MCA as same shall be summarily rejected; However, this shall be without prejudice to liability of said person for violation of Section 164(2) r/w Section 167, including the action u/s 448 r/w 447 wherever warranted, states MCA; On the other hand, Dept. of Financial Services, Ministry of Finance, advises all Banks to take immediate steps to put restrictions on bank accounts of over 2 lakh 'struck off' companies u/s 248 of Companies Act 2013; States that ex-Directors and ex-Authorized Signatories will "not be able to operate bank accounts of such companies till such companies are legally restored under Section 252 of the Companies Act by an order of the National Company Law Tribunal"; In addition to such struck off companies, advises Banks to go in for enhanced diligence while dealing with companies in general, cautioning that even a company having an active status on MCA website but defaulting in filing of its due Financial Statement(s) / Annual Return(s) reflecting particulars of charges on its assets on the secured loan should be seen with suspicion as, prima facie, the company is not complying with its mandatory statutory obligations to file this vital information for availability to its stakeholders: MCA Notice & PIB Release

MCA: Cautions Administrative bodies against transfer of properties of struck-off companies

After MCA sent letter to each State asking them to identify and track properties belonging to around 2.09 lakh (now up to 2.25 lakh) struck-off companies, the Minister of State for Law, Justice and Corporate Affairs, Mr. Chaudhary now seeks a response from State Govts and completion at the earliest for process of identification, and sharing of the information with MCA, and discusses follow-up action to be taken on properties of the struck-off companies; Stresses on unearthing benami properties, thereby discouraging illegal and corrupt practices, improving ease of doing business and creating a healthy economic environment for honest businessmen; States that consequent upon striking-off from the Register of Companies, any transaction pertaining to properties owned by such companies by the Directors or authorized signatories of such companies would be void ab initio and a nullity, till such companies are restored by an NCLT order u/s. 252 of Companies Act, 2013; Further clarifies that the District Administration has the duty to prevent any transaction in such properties, and to exercise due

diligence based on information shared by the Ministry of Corporate Affairs; Lastly, he also warns that erring officials who allow registration of such transactions may be subject to disciplinary action as such companies stand dissolved under Companies Act, 2013: PIB

De-registered Co.'s properties cannot be used / alienated till Co. is restored: Minister

Shri P.P. Chaudhary, Minister of State for Law & Justice / Corporate Affairs in written reply to a question in Lok Sabha deliberates on the properties of struck-off cos. States that properties of struck off cos. from RoC cannot be used, operated, transferred or alienated in any manner; States that so far, 2,24,733, cos. have been struck off from Register of Companies and that assets, properties etc. (i.e. all movable and immovable assets/properties) of such struck off cos. (which ceased to operate as legal entities) cannot be used, operated, transferred or alienated in any manner by the cos. including by their ex-directors/authorized signatories, till they are restored u/s Section 252 of Cos. Act. :PIB

NCLT restores 46 'struck-off' companies to protect Revenue's interest

NCLT, vide its interim orders, directs 46 companies (which were struck-off by ROC) to be deemed to be restored to its original number and entitles petitioner (Tax Dept.) to raise demand by serving notice in accordance with law; In case of few of the companies, NCLT notes that re-assessment proceedings u/s. 148 have to be initiated, remarks that "If the interim relief is not given then the notice for reopening the assessment cannot be issued."; In case of few other companies, NCLT takes note of pending tax litigation before the income-tax appellate authorities, thus observes that the Directors therein had filed false affidavit of no pending litigation; Accordingly, observing 'prima-facie' case for restoration of companies, NCLT passes the interim orders: NCLT

HC: Allows pvt co's name restoration despite annual filing default for 14 years

HC allows petition u/s 560(6) of Cos Act, 1956 to revive co's name and sets aside Registrar of Companies' ('RoC') order whereby petitioner co.'s (Private Limited Co.) name was struck off from Register of Companies; Observes that proof of dispatch of notices to petitioner for striking off petitioner's name was not traceable, thus holds that condition precedent to striking co's name off the register was not satisfied; Further notes that petitioner was a running co. and instant petition was filed within limitation period of 20 years, thus allows restoration of petitioner's name; Relies on Bombay HC ruling in Purushottamdas and Anr. (Bulakidas Mohta Co. P. Ltd.) v. RoC, Maharashtra, &Ors. wherein it was held that "the object of section 560(6) of the Act was to give a chance to company, its members and creditors to revive company which had been struck off by Registrar of Companies."; However observes that petitioner had not filed its annual returns and balance sheets for almost 14 years (FY 2000 to 2014, prior to applying for 'strike off'), states that "a greater degree of care is certainly required from petitioner in ensuring statutory compliances" and directs petitioner to pay Rs. 22,000 and complete all formalities: Delhi HC

[LSI-888-HC-2015-(DEL)]

NCLT: Company's name restoration not at director's discretion once opted for exit under FTES

NCLT, Principal Bench, New Delhi dismisses petition after finding no case for name restoration of Rahul Rice Mills Pvt. Ltd. ('Petitioner') after being struck off u/s 560 of the Companies Act, 1956 ('the Act'); Holds that Petitioner firstly, had no locus standi to file the petition as no such name existed in the register of Registrar of Companies ('ROC') and secondly there was no reasonable cause for revival of Company's name on any grounds specified u/s 560 of the Act, once the directors had voluntarily sought exit of Petitioner Company under the Fast Track Exit Scheme, 2011 ('FTES'); Points out that there was nothing on record to show that the Company was transacting business after its dissolution or it had any property; Holds that merely because the directors were now in a position to infuse funds wouldn't constitute sufficient ground to accept the prayer for restoration of Company's name in the register of ROC; Remarks that it was not at the discretion of the erstwhile directors of the company to get the company struck off / revive at any time especially when they had exercised the discretion for getting its name struck off under the FTES: NCLT Principal Bench

[\[LSI-1561-NCLT-2017-\(PB\)\]](#)

NCLT: Directs Company's name restoration subject to filing of statutory documents

Delhi NCLT directs restoration of International Security Printer Pvt. Ltd. ('Petitioner'), its Directors and members name in the Register of Companies maintained by Registrar ('Respondent'); Notes that Petitioner company's name was struck off from the Registrar of Company u/s 560 of the Company Act, 1956 on the account of its failure to file statutory returns and other document since its incorporation which led to the view that the Company was not operational; Relies on Bombay HC ruling in Purushottamdas and Anr. in this regard; Holds that such restoration would be subject to Petitioner filing all statutory documents i.e. annual returns and Balance Sheets along with the prescribed fees in compliance with statutory requirements outlined in Sec. 252 (3) of Companies Act, 2013: New Delhi NCLT

[\[LSI-1563-NCLT-2017-\(NDEL\)\]](#)

NCLT: Allows restoration of Company's name at the behest of unsecured creditor

NCLT, New Delhi allows restoration of Company's name in the interest of unsecured creditor ('Petitioner 2'), who wasn't a part of the petition for deletion of Company's name; Notes that details of unsecured creditor were duly mentioned in the Balance Sheet of the Company; Points out the object of Sec. 560(6) of the Companies Act, 1956 wherein a Court may allow restoration of Company's name where it is of the view that it is just to do so; Allows restoration of the Company despite it being defunct; Relies on ruling of Delhi HC in Intech Corporation Pvt. Ltd and Madhya Pradesh HC in Bridge Fiscals Pvt Ltd. in this regard: New Delhi NCLT

[\[LSI-1577-NCLT-2017-\(NDEL\)\]](#)

HC: Directs restoration of Company's name in RoC's register u/s 560 of Companies Act, 1956

Gauhati HC directs restoration of Petitioner Company's (Felpact Private Ltd.) name in the register maintained by the RoC; Notes that the RoC had struck off Petitioner Company's name due to the non –

filing of annual returns; Observes that as per Sec. 560 (6) of the Companies Act 1956 the Company/ any member/ any creditor can present/maintain a restoration application within a period of 20 years from the publication made in the official Gazette of the notice to strike out its name from RoC's register; Further notes that Sec. 560(6) permits restoration of a Company's name not only if it is shown that the Company was carrying on business/ was in operation, but also if it was otherwise just that the Company be restored to the register; With regards to the challenge to the locus standi of Petitioner No.2 opines that irrespective of the fact whether Petitioner No.2 was competent to represent the Petitioner "there cannot be any dispute that sub-section (6) of section 560 of the Companies Act, 1956 does permit any share-holder, irrespective of his share-holding, to file such application and, as such, even without venturing to adjudicate on the competency of the petitioner No.2 to represent the petitioner No.1" and thus "in his individual capacity also, the present application is maintainable": Gauhati HC

[\[LSI-1691-HC-2017-\(GAU\)\]](#)

NCLT: Dismisses petition for name restoration of Co., observes misrepresentation of facts & director's address

NCLT (Principal Bench, New Delhi) dismisses petition for restoration of name of the company (SK Bajaj Rubber Pvt. Ltd., 'Applicant Co.') from the Register of Companies, imposes cost of Rs. 10,000/- on director; Notes that name of Applicant Co. was struck off by Official Gazette Notification (dated May 31, 2007) for non-filing of Annual Accounts and Annual Returns since 1999; NCLT peruses provisions of Sec. 252 of the Cos. Act, 2013, states "when we apply the said statutory parameters to the facts of the present case, the petitioner has not been able to show that on May 31, 2007 when it was struck off, it was in fact carrying on business or it was in operation"; Observes that petitioner has not approached NCLT with clean hands as it has been unfairly claimed that annual return was filed upto the year ending 2003, however as per ROC records, Applicant Company had filed last returns in 1998; Peruses the resolution attached with the petition, observes that petition is surrounded with doubts as the address of director is entirely different from ROC records, states that "It would further fortify the view that the company has no business transaction": NCLT Principal Bench

[\[LSI-1787-NCLT-2017-\(PB\)\]](#)

NCLT: Allows Application for name restoration, adopts liberal approach, directs compliance

NCLT (Allahabad Bench) allows application, directs restoration of the name of Snap Pack Pvt. Ltd. ('Applicant Company'); Notes that the Registrar of Cos. had struck off the Applicant Co. from Register of Cos. by its order dated May 11, 2010 and the application for restoration was filed before NCLT on June 31, 2017; Relies on the Delhi High Court's ruling in TE Corporation Vs Siddhant Garg, wherein it was held that the Court should adopt liberal approach for allowing the restoration of Co. name and by allowing the same no serious prejudice is going to cause to third party; Observes that as the company is still having its assets with no creditors, the company can restart its business upon being restored in the Register of ROC; Directs the Applicant Co. to file all its statutory returns under the Companies Act, 1956/2013 with ROC, Kanpur: Allahabad NCLT

[\[LSI-1806-NCLT-2017-\(ALLD\)\]](#)

NCLT: Pending litigation a valid reason for name restoration, allows petition

NCLT (Allahabad Bench) allows petition filed by Red Diamond Granite Stone Pvt. Ltd. ('Petitioner Co.') for restoration of name u/s 560 of Cos. Act, 1956, however imposes cost of Rs. 25,000/- for failing to file Annual Returns within prescribed time; Directs Petitioner Co. to complete the all statutory compliances and legal obligations within 3 months; Notes that the Petitioner Co. could not operate as a going concern as it could not succeed in getting lease deed executed from the State Govt. for carrying out prospecting and mining work on land (which belonged to Govt. Degree College in Uttar Pradesh), thus leading to litigation with District Administration Authority along with UP Govt.; Notes that the suit was pending before a competent Civil Court, opines that "Due to this litigation the Petitioner Co. could not start its function and still agitating its claim and contractual right before the Court of Law.... In the strict legal sense such cannot be presumed that there was no activity at all in the co. or the company was not in operation because of the company could not start its activity or function for want of execution of lease deed or mining land in its favour"; Observes that owing to the pending litigation, the Petitioner Co. failed in filing its statutory returns for 8 consecutive years; Relies on the precedent set by Delhi HC's Division Bench in TE Corporation Vs. Siddhant Garg and Bombay HC's judgment in Indian explosive Vs ROC, concludes that "When a litigation is pending by or against the company, it would be proper to restore the name of the cos. in Register, to enable the matter to be carried to its conclusion": Allahabad NCLT

[\[LSI-1880-NCLT-2017-\(ALLD\)\]](#)

NCLT: Name Restoration necessary for taking delivery of goods from Port, allows application

NCLT (Ahmedabad Bench) directs name restoration of Sai Gajanan Multitrade Pvt. Ltd. ('Applicant Co.') u/s 252 of the Cos. Act, 2013, directs publication of Notice in Newspaper; Notes that there was a change in Accountant and other administrative staff in the Applicant Co. in 2014 and therefore necessary Returns were not filed for the last 3 years; Notes that the Applicant Co. sou moto uploaded the Annual Returns/Financial Statements, however, the Registrar of Cos. intimated that the name of the Applicant Company has been struck off w.e.f. June 21, 2017 u/s 248(5) of Cos. Act, 2013; Further notes that Co. had imported goods from USA which had already arrived at Mumbai Port but due to non-linking of IEC with Corporate Identification Number (CIN) the goods could not be cleared from the Port; NCLT takes into consideration the facts and documents submitted by Applicant Co., opines that Applicant Co. is carrying on the business and it has to take delivery of such goods from the Port for which the name restoration is necessary; Opines the Applicant Co. is carrying on the business and it is just to restore the name of the Company: Ahmedabad NCLT

[\[LSI-1881-NCLT-2017-\(AHM\)\]](#)

NCLT: Directs name restoration of 'De-registered Cos.' and post-compliance activities, imposes cost

NCLT (Kolkata Bench) allows application filed by Mr. Tara Goenka (shareholder and director of Co.), directs restoration of name of Co. Campo Commercial Pvt. Ltd. ('Co.') in the register of Registrar of Companies, West Bengal; Directs Co. to file all the arrear statutory documents (along with additional fees) within prescribed time, also directs Co. to pay cost of Rs. 30,000/- to Prime Minister's Relief Fund; Notes Co.'s submission that the Company Accountant, who was responsible for preparing statutory compliances, had failed to carry out his duties and when director's initiated immediate steps for annual

filing the Co.'s name was struck-off from the Register of Cos.; Notes non-compliances, peruses provisions of Cos. Act, 1956/2013, states that primary responsibility for ensuring that proper returns and statutory documents are filed within time remains with the Co.'s management: Kolkatta NCLT

[\[LSI-1903-NCLT-2017-\(KOL\)\]](#)

NCLT: Allows name restoration, considers technical issues in MCA system for filing eForms

NCLT (Division Bench, Chennai) allows Petition filed u/s 252(3) of Cos. Act, 2013 for restoring the name of Shree Nakshatra Projects and Developers Pvt. Ltd. ('Applicant Co. '); Notes Co.'s submission that original subscribers failed to appoint the first auditors of the Applicant Co. and therefore the financial accounts for the year 2012-2013 could not be audited, approved and adopted; Further notes that after induction of 2 directors, the annual accounts were drawn up, audited, approved w.e.f. 2013-2014; Notes Applicant Co.'s submission that MCA system did not allow filing of subsequent balance sheets and annual returns till the annual accounts of 2012-2013 were not filed with MCA/ROC; Allows petition for name restoration, directs Applicant Co. to complete all formalities of pending filings under Cos. Act, 2013:Chennai NCLT

[\[LSI-1924-NCLT-2017-\(CHE\)\]](#)

NCLT: Allows Name Restoration application, notes execution of 'Agreement to Sell' of Co.'s property

NCLT (Chandigarh Bench) allows petition for restoration of name of Mahajan Agro Mills Pvt. Ltd. ('Co. '), directs Co. to complete pending annual filing within 2 months; Clarifies that restoration of Co.'s name not affect: (i) Dept. of Income Tax from taking appropriate action for any tax liability, (ii) Registrar of Companies to launch prosecution for any liability for violation of the provisions of Co. Law; Notes Co.'s / Directors submission that the Co. owns land, plant and machinery and other assets, and the Co. had executed an 'Agreement to Sell' of the property in favour of directors and shareholders of Co.; Notes that the Co. / Directors were paying electricity bills (received in the name of Co.) but the unit was not functioning; Observes that there has not been any change in ownership of co. in the revenue record; Refers to the proof of payment and affidavits submitted w.r.t. payment of consideration for sale of property by the directors and shareholders to the Co.: Chandigarh NCLT

[\[LSI-1944-NCLT-2017-\(CHD\)\]](#)

NCLT: Allows director's application for revival of company, directs annual filing & public notice

NCLT (Ahmedabad Bench) allows application filed by director ('Appellant') of Prestige Tefparts Pvt. Ltd. for restoring the name of the Company in the Register of Companies; Directs the Appellant to file the statutory returns within a prescribed time of 2 weeks and publish the same in English and Gujarathi newspaper w.r.t. the restoration of company name; Peruses documents, notes that the company is carrying on the business; Notes that ROC reported 'no objection' to restore the company subject to filing of statutory returns which were not filed: Ahmedabad NCLT

[\[LSI-1945-NCLT-2017-\(AHM\)\]](#)

NCLT: Allows member's application for revival of Company, directs annual filing & public notice

NCLT (Ahmedabad Bench) allows application filed by two members ('Appellants') of Anil Shah Financial Services Pvt. Ltd.; Notes that Company failed to file its statutory returns since the Financial year 2005 and therefore Registrar of Companies initiated action u/s 248(1) of the Cos. Act, 2013; Notes Applicants' submission that Co. was unable to file the documents/returns as the directors of the Co. were not aware of the provisions of Co. law and also on account of ill-health of the 2 directors; Further notes that the Co. was regular in filing its income tax returns; Directs the Appellant to file the statutory returns within a prescribed time of 2 weeks and publish the same in English and Gujarathi newspaper w.r.t. the restoration of company name: Ahmedabad NCLT

[\[LSI-1946-NCLT-2017-\(AHM\)\]](#)

NCLT: Name Restoration power discretionary; Rejects application of company deregistered under 'Exit Scheme'

NCLT (New Delhi) dismisses application filed by Prudent Fire Services Pvt. Ltd. ('Co.') for restoration of its name in Register maintained by Registrar of Cos.; Rules that power to restore the name is discretionary power, which can be exercised for a substantial reason, and not as a ritual or ceremony; In 2001, the Co. had applied for striking off under Easy Exit Scheme, 2011 duly supported by an affidavit and indemnity bond from directors u/s. 560 of Cos. Act, 1956, as it was inoperative for past 6 years and was not able to sustain with prevailing competition in market/ continuous accumulation of losses; Notes Co.'s submission that its directors/ shareholders want to revive it to do the same business and, if required, new directors/ investors would be inducted to cope with market demands; NCLT notes that Sec. 252 of Cos. Act, 2013 (corresponding to Sec. 560 of Cos. Act, 1956) states that if any one of three conditions are satisfied, NCLT would exercise jurisdiction to restore the name of Co., namely: (i) Co. at the time of its name strike-off was carrying on the business, or (ii) Co. was in operation, or (iii) It is otherwise just that the name of the Co. be restored on the Register; As the Co. itself admitted that it was inoperative for 6 years and directors/ shareholders themselves had applied for strike off, NCLT opines that "When they themselves apply for exit, there cannot be any grievance in the striking off of the name of Co."; Relies on Calcutta High Court's ruling in Viswanath Agarwal vs. ROC, West Bengal: New Delhi NCLT

[\[LSI-1959-NCLT-2017-\(NDEL\)\]](#)

NCLT: Directs restoration, notes completion of annual filing before ROC's strike-off, imposes no cost

NCLT (Mumbai Bench) allows application filed by the shareholder of Co. (Mr. Narendra Popatlal Barhate) for restoring Seed Management Services Pvt. Ltd. in the Register of Cos.; Refers to Notice received by the Co. from Registrar of Cos. u/s 248 of Cos. Act, 2013 for not carrying on any business or operation for a period of 2 years immediately preceding financial years and has not applied for the status of 'Dormant Co.'; However, notes that the Co. had filed Financial Statements and Annual Return for FY ended March 31, 2015 and 2016 and that the Registrar of Cos. was informed to take no further action; Refers to the list of employees, purchase orders, bank statements, Shop Act registration, Invoices / Service Tax Returns, TDS returns, software installation certificate, salary statement, electricity bill during Jan. 2017 to August 2017, Index II of leave and license agreement; Directs Registrar of Cos. to restore the name of

the Co. from the date of strike off the Co. and treat the Co. as if it has never been struck off: Mumbai NCLT

[\[LSI-1972-NCLT-2017-\(MUM\)\]](#)

NCLT: Govt.'s crackdown on shell cos. will be jeopardized, if non-operative cos. are revived

NCLT(Hyderabad Bench) dismisses application filed by Ropure Aqua-Tech Pvt. Ltd. ('Applicant/'Company') u/s 252 of Cos. Act, 2013 for restoration of name in Register of Cos. maintained by Registrar of Cos.; Notes that the Applicant had filed application and requisite attachments/Annexures and submitted that due to some operational issues and financial crises, the Co. could not commence its business since incorporation (2009) and even did not file Annual Accounts with ROC; Notes that Co. has 3 directors who are managing the business activities since very long time; Considering that the Co. did not commence its business since its inception, NCLT opines that "There is no justification for restoration of Co.'s name in the Register of Cos. as prayed for If the prayer of the Applicant Co. is accepted, we are of the prima facie view that the Govt.'s crackdown on shell cos. will be jeopardized": Hyderabad NCLT

[\[LSI-2011-NCLT-2017-\(HYD\)\]](#)

NCLT: Dismisses application for name restoration, cites non-commencement of business since incorporation

NCLT(Hyderabad Bench) dismisses application filed by Arete Power & Infra Pvt Ltd. ('Applicant/Company') u/s 252 of Cos. Act, 2013 for restoration of name in Register of Cos. maintained by Registrar of Cos.; Notes that the Co. could not commence its business since incorporation (August 2011) and even did not file Annual Accounts with ROC; Considering that the Co. did not commence its business since its inception, NCLT opines that "There is no justification for restoration of Co.'s name in the Register of Cos. as prayed for If the prayer of the Applicant Co. is accepted, we are of the prima facie view that the Govt.'s crackdown on shell cos. will be jeopardized": Hyderabad NCLT

[\[LSI-2012-NCLT-2017-\(HYD\)\]](#)

NCLT: Rejects application for name restoration, finds no lacunae in striking off name from ROC

NCLT(Hyderabad Bench) dismisses application filed by Anim Vision Studio India Pvt. Ltd. ('Applicant/Company') u/s 252 of Cos. Act, 2013 for restoration of name in Register of Cos. maintained by Registrar of Cos.; Notes that the Co. could not commence its business since incorporation (January 1, 2008) and even did not file Annual Accounts with ROC; Based on the submissions of the Applicant, NCLT notes that Applicant itself has decided to close the Co. by filing requisite forms with ROC; Considering that the Co. did not commence its business since its incorporation, NCLT opines that "There is no justification for restoration of Co.'s name in the Register of Cos. as prayed for If the prayer of the Applicant Co. is accepted, we are of the prima facie view that the Govt.'s crackdown on shell cos. will be jeopardized"; Holds that there is no lacuna in ROC striking off the Co.'s name from the Register of Cos., if the Co. has failed to commence its business since incorporation for period of 2 Financial Years: Hyderabad NCLT

[\[LSI-2013-NCLT-2017-\(HYD\)\]](#)

NCLT: Allows name restoration Application, notes land development agreement during Co. de-registration

NCLT (Ahmedabad Bench) allows application filed by Mr. Vasudev Hemubhai Dabhi (Member and Director of Sehan Developers Pvt. Ltd., 'Appellant') seeking restoration of Sehan Developers Pvt. Ltd.'s name in Register of Companies; Observes that the Appellant could not file returns of the Co. as its name had already been struck off from the Register of Companies, by the ROC, pursuant to notice u/s 248(1) and (2) of the Cos. Act, 2013 ('Act'); Notes ROC's contention that the only reason for striking off the name of the Co. was non-filing of Annual Returns within prescribed time; Notes that the Co. was registered with the object of doing real estate business and it entered into an MoU to purchase certain lands for the development; Peruses Sec. 252(3) of the Act that requires carrying on the business / operation on date of strike off, holds that on grounds that the Co. was required to carry on its business and pay balance amount to owner of the land; Directs Registrar of Cos. to restore Co.'s name, subject to some conditions: (i) Filing of all overdue statutory returns by paying fees and additional fees , (ii) Publication of notice by Appellant, regarding restoration of Co.'s name, in two leading newspapers and official Gazette , (iii) Production of the Acknowledgement of IT Return filed with Income Tax Authorities before the ROC and copies of bank account statements and (v) Operation of Bank Account by Co. only after obtaining clearance from Financial Services Dept.: Ahmedabad NCLT

[\[LSI-2083-NCLT-2017-\(AHM\)\]](#)

NCLT: Dismisses Name restoration Application, cites non-enhancement of share capital to minimum threshold

NCLT (Principal Bench) dismisses petition for name restoration filed by Navbharat Gasflame Marketing Co. Pvt. Ltd. ('Petitioner Co. '), observes that subscribed capital of the Petitioner Co., being a Private Ltd. Co. was Rs. 300/- and that it had failed to file its annual returns right since 1998 till 2014 as well as income tax returns before the IT authorities since 1998 till 2013; Notes that the Petitioner Co.'s name was struck-off the Register of Companies by the ROC, vide notification dated 23.06.2007 published in the Official Gazette of India, u/s 560 of Cos. Act, 1956 ('Act'); Examines documents submitted by Petitioner Co. in an attempt to prove that it was carrying on business, viz. Accounts, Income tax return (for AY 2014-15), and regarding Accounts, remarks, "The accounts which have been attached with the petition do not inspire confidence and cannot be accepted as evidence of facts that the company was carrying on its operation or it has any property", holds that Petitioner Co. failed to satisfy the requirement of Sec. 560(6) of the 1956 Act; Upholds ROC's objection regarding subscribed capital of Petitioner Co., peruses Sec. 3 of the Act which defines 'private company' and states, "...every private company with a paid-up capital of less than one lakh rupees was required to enhance its paid-up capital to one lakh rupees within a period of two years from the commencement of Companies (Amendment) Act, 2000..and the consequence of not enhancing the paid-up capital....is that such a company shall be deemed to be a 'defunct company' within the meaning of section 560.."; Holds that the Petitioner Co. would also not qualify to have its name restored on the register of the Registrar of Companies in view of Section 3(3) of the Act: New Delhi NCLT

[\[LSI-2084-NCLT-2017-\(NDEL\)\]](#)

NCLT: Directs name restoration of 'Active Co.', observes Accounts approval in shareholders' meeting before strike-off

NCLT (New Delhi Bench) allows petition for restoration of County Hotels and Resorts Pvt. Ltd. ('Petitioner Co. '), subject to filing of all outstanding documents and payment of cost of Rs. 25,000/- to Prime Minister Relief Fund; Notes that Petitioner Co.'s name was struck off pursuant to MCA directions and since the Co. did not file its Balance sheet and Annual Returns since 2013, it gave rise to reasonable presumption that Petitioner Co. was not in operation; Notes Petitioner Co.'s contention that Annual Accounts from financial year 2013 to 2016 were duly laid and adopted in the respective years' Annual General Meetings, however, without any mala fide motive, due to lack of professional advice, the Petitioner Co. had failed to file the same with ROC; Observes from documents submitted by Petitioner Co., (i.e.. Income tax and VAT Returns) and also based on sufficient evidence to support its submission that its audited accounts were approved before name was struck off, that the Petitioner Co. was carrying on business at the time when its name was struck off; Holds ROC's assumption that the Petitioner Co. was not in operation, to be completely erroneous, remarks that the appeal has been filed well in time within the period stipulated under Sec. 252 of Cos. Act, 2013; States that "Even if the management of the company entrusted with the responsibility of filing documents had failed to do so, yet since the company is a running company and the application has been filed in time, the Tribunal clearly has the power to restore the name of the company.": New Delhi NCLT

[\[LSI-2085-NCLT-2017-\(NDEL\)\]](#)

NCLT: Restores Co. name upon noting filing of I-T returns, assets & liabilities

NCLT restores the name of Hermes Sports-Tech Pvt. Ltd. ('Petitioner') in Register of Companies after being struck-off on account of non-filing of statutory returns for 2 consecutive years; Notes petitioner's submission that co. is running business and has assets along with corresponding liabilities & statutory dues, and that no application was filed either for obtaining status of dormant co. u/s 455 or for striking off u/s 248 of Cos. Act 2013; On the other hand, takes into consideration submission of RoC that since Co. was not carrying on any business or operation and not filed statutory returns, it had contravened provisions of Sections 92 and 137 of Cos. Act; However, noting that Co. has filed statutory I-T returns during concerned FYs, NCLT orders restoration with direction to comply with provisions of Cos. Act and subject to payment of cost of Rs. 5000/-; Says that consequentially, Bank Account(s) if frozen, shall be allowed to be operated by petitioner: Mumbai NCLT

[\[LSI-2128-NCLT-2017-\(MUM\)\]](#)

NCLT: Restores Co. name; Annual Returns non-filing unintentional, no heavy deposits during demonetization

NCLT allows petition u/s 252 of Cos. Act of Armeka Financial Consultants Pvt. Ltd. ('Petitioner') for restoration of name in Register of Companies; Notes that name of Petitioner Co. was struck off from Register for not carrying business for 2 consecutive years and had made no application for obtaining dormant status u/s 455 of the Act; Further notes that while Co. could not file required documents with RoC, such non-filing was neither willful nor intentional and that Co. is willing to file the same if permitted; Finds that petitioner's audited accounts have been approved within prescribed time, and that Co. has not deposited heavy cash in Bank Account during period of demonetization i.e. November 8

to December 31, 2016 instead of regular trade deposits; Accordingly, directs restoration subject to compliance with provisions of Cos. Act and payment of costs of Rs. 10,000/-: Mumbai NCLT

[\[LSI-2129-NCLT-2017-\(MUM\)\]](#)

NCLAT: Foils Co.'s attempt to restore name making CA scapegoat for non-compliance

NCLAT dismisses appeal filed by Akash Ganga Builders Pvt. Ltd. ('Appellant Co.') challenging order of Registrar of Companies, NCT of Delhi & Haryana ('ROC') striking off Appellant Co.'s name from the Register of Companies u/s 560 of the Cos. Act, 1956; Notes that despite ROC's repeated reminders, Appellant Co. had not raised its capital to minimum required under the Act, and had not filed its Annual Returns and therefore it was subsequently again deregistered; Remarks that matters such as functional irregularities of MCA website, CA's inability to find ways to help Appellant Co. in tiding over the difficulties arising out of a shareholder's death and non-filing of returns, were matters of day to day functioning which have to be dealt with by the Co. on its own; Remarks, "Such excuses for defaults over so many years cannot be accepted." Notes that the Appellant Co. moved NCLT without making out grounds under Sec. 560(6) of the Act which required it to show that it was carrying on business at the time of striking off, and thus finds no fault with the ROC's action of striking-off: New Delhi NCLAT

[\[LSI-2147-NCLAT-2017-\(NDEL\)\]](#)

HC: Allows petitioner benefit under CODS Scheme despite being struck off u/s. 248

Delhi HC allows petitioners to file all requisite returns in relation to the struck off company (Shiv Vani Buildwell Pvt. Ltd.), so as to avail benefits available under Condonation of Delay Scheme, 2018 ('CODS-2018 Scheme'); Petitioners submitted that their company was in active business, but had defaulted in filing statutory returns, for which they incurred default u/s. 164(2) of the Companies Act, 2013 ('the Act'); Consequently, name of their company was removed from the Register of Companies as per s. 248(1) of the Act; Petitioners also admitted that non-filing of documents was a bona fide mistake without any mala fide intent, and the company was ready to submit all relevant documents from FY ending March 31, 2011 onwards; HC also directs NCLT to dispose off name restoration appeal against the petitioner's company expeditiously by March 31, 2018 and, in case of failure to dispose it off within time as aforementioned, with delay not attributable to petitioner, respondent to ensure that scheme under CODS 2018 is extended for the petitioner accordingly; Clarifies that if petitioners do not avail CODS 2018 scheme or file necessary documents as required, petitioners would be liable to be prosecuted for contempt of court, in addition to other consequences: Delhi HC

[\[LSI-11-HC-2018\(DEL\)\]](#)

NCLAT: Dismisses restoration application aimed at enabling Company's winding up

NCLAT dismisses appeal challenging NCLT order, dismissing Appellant Company's application for restoration of Company's name u/s 252 of the Companies Act, 2013 ('the Act'); Notes that Appellant Company was struck off from the Register of Companies u/s 248 of the Act for non-filing of its financial statements and annual returns for a period of 3 consecutive years; Takes note of Appellant Company's submission that it was not carrying out any business operations and that restoration would enable it to wind up the Company; Opines that the object of Sec. 252 of the Act was to safeguard Companies, which

were carrying on business or were in operation so that they get an opportunity to be restored, holds that restoration of the Company so that it could be wound up wasn't justified; Lastly dismisses Appellant's plea that Director's were affected owing to Company's name been struck off as their Director Identification Number ('DIN') was blocked, which also impacted other Companies where they held directorship:New Delhi NCLAT

[\[LSI-286-NCLAT-2018\(NDEL\)\]](#)

MCA introduces Delay Condonation Scheme, 2018 for non-compliant defaulting companies

Central Govt. introduces "Condonation of Delay Scheme 2018" ('CODS-2018') w.e.f. January 1, 2018 till March 31, 2018, granting opportunity to non-compliant defaulting companies to rectify the default w.r.t. non-filing of Annual Financial statements and Annual Returns with the Registrar of Companies, except companies which have been struck off/ whose name has been removed from the register of companies u/s 248(5) of the Companies Act, 2013 ('the Act'); Defines 'overdue documents' as financial statements or the annual returns or other associated documents, as applicable, in the case of a defaulting company and refers to documents mentioned in paragraph 5 of the scheme and "Defaulting company" as a company which has not filed its financial statements or annual returns as required under the Companies Act, 1956 or Companies Act, 2013, as the case may be, and the Rules made thereunder for a continuous period of 3 years; Permits defaulting companies to file their overdue documents which are due for filing till June 30, 2017 on payment of statutory filing fees along with additional fees, post which defaulting companies shall seek condonation of delay by filing form e-CODS, along with filing fee of Rs. 30,000/- and allows temporary activation of DINs of disqualified directors for the said purpose during validity of the scheme; Calls for deactivation of DINs of disqualified directors who fail to file their overdue documents and the e-form CODS on conclusion of the scheme period in terms of Sec. 164(2)(a) r/w 167(1)(a) of the Act and authorizes the Registrar to take all necessary actions under the Act against the companies who have not availed themselves of this Scheme and continue to be in default; In case of defaulting companies whose name has been removed from the register of companies u/s. 248 of the Act and which have filed applications for revival u/s. 252 up to the date of the Scheme, the director's DIN shall be re-activated only on NCLT's order of revival subject to the company having filed all the overdue documents; MCA has identified 3,09,614 directors in September, 2017 associated with companies that have failed to file financial statements or annual returns for a continuous period of 3 financial years, 2013-14 to 2015-16 in terms of provisions of Sec. 164(2) r/w Sec. 167(1)(a) of the Act and barred them from accessing the online registry: MCA

MCA : Clarifies regarding CODS filing requirements for struck-off companies petitioning NCLT

Following representations from stakeholders raising doubts (i) regarding filing requirements of Form e-CODS, 2018 in cases where petitions have been filed before NCLT u/s 252 of the Companies Act 2013 ('the Act') during the Scheme, for which orders are pending, and (ii) whether such struck-off Companies can file e-CODS, upon obtaining NCLT orders even after May 1, 2018, MCA issues clarifications regarding filing requirements for Companies whose names have been removed from the Register of Companies under the Condonation of Delay Scheme, 2018 ('the Scheme'); Takes note of General Circular dated December 29, 2017, which provides that in case defaulting Companies whose names have been removed from the register of companies and which have filed applications for revival, Directors' DIN shall be re-activated only on NCLT's order of revival, provided the Company has furnished all overdue

documents; Accordingly directs the Registrar of Companies ('RoC') to – (i) raise a ticket through Change Requirement Form ('CRF') on MCA-21 portal along with a copy of NCLT's order, and (ii) activate Directors' DIN of such struck-off Companies revived vide NCLT's order, on E-governance to enable them to file e-CODS, 2018; However, bars Directors, whose DINs are proposed to be activated through CRF from being Directors on any other Company which has been struck-off u/s 248(1) of the Act, other than the one revived through NCLT order as mentioned in CRF, and casts onus of ensuring this on the RoC; Further directs RoC to ensure that CRFs are raised in such cases only after – (i) thorough scrutiny of NCLT orders, and (ii) ensuring that such struck-off Companies have filed all overdue documents before furnishing e-CODS, 2018, and had also filed petitions before the NCLT during validity of the Scheme: MCA

HC: Allows petitioner benefit under CODS Scheme despite being struck off u/s. 248

Delhi HC allows petitioners to file all requisite returns in relation to the struck off company (Shiv Vani Buildwell Pvt. Ltd.), so as to avail benefits available under Condonation of Delay Scheme, 2018 ('CODS-2018 Scheme'); Petitioners submitted that their company was in active business, but had defaulted in filing statutory returns, for which they incurred default u/s. 164(2) of the Companies Act, 2013 ('the Act'); Consequently, name of their company was removed from the Register of Companies as per s. 248(1) of the Act; Petitioners also admitted that non-filing of documents was a bona fide mistake without any mala fide intent, and the company was ready to submit all relevant documents from FY ending March 31, 2011 onwards; HC also directs NCLT to dispose off name restoration appeal against the petitioner's company expeditiously by March 31, 2018 and, in case of failure to dispose it off within time as aforementioned, with delay not attributable to petitioner, respondent to ensure that scheme under CODS 2018 is extended for the petitioner accordingly; Clarifies that if petitioners do not avail CODS 2018 scheme or file necessary documents as required, petitioners would be liable to be prosecuted for contempt of court, in addition to other consequences: Delhi HC

[\[LSI-11-HC-2018\(DEL\)\]](#)

HC: Absent disqualified Director's fault, grants opportunity to rectify defects, under CODS 2018

Delhi HC allows the Petitioner to avail the benefit under the Condonation of Delay Scheme- 2018 ('the Scheme'), in a writ petition challenging his disqualification as a Director and the constitutionality of Sec. 164(2)(a) and 167(1)(a) of the Companies Act, 2013 ('the Act'); Notes that the Petitioner was a Promoter and Director in several Companies, and had resigned as a Director from one of such Companies, but the Company had failed to file his resignation with the Registrar of Companies ('ROC'); Observes that the Company was functional without incurring penalties u/s 248(1) of the Act and stood validly registered with the ROC; Allowing the Petitioner a fair opportunity to make good defects/faults HC directs filing of requisite returns and application in relation to the Company in order to enable the Petitioner to avail the benefits under the Scheme; However, clarifies that failure on part of the Petitioner to follow HC's directions will make him liable to be prosecuted for Contempt of Court in addition to other consequences: Delhi HC

[\[LSI-62-HC-2018\(DEL\)\]](#)

HC: Grants the benefit under CODS-2018 Scheme for Company's willingness to seek voluntary dissolution

Delhi HC allows Petitioners to avail the benefit under Condonation of Delay Scheme- 2018 ('the Scheme') in a writ petition which impugned a "lists of disqualified directors" published by the Ministry of Corporate Affairs u/s 164(2) of the Companies Act, 2013 ('the Act'); Notes that the Company in which Petitioner was a Director, had been struck off from the Register of Companies maintained by the Registrar of Companies ('ROC'), and hence were disabled from availing benefits of the Scheme; Further notes that Petitioners were not in a position to seek revival of the Company u/s 252 of the Act, since it was not carrying on any business, takes note of Petitioner's submission that the Company would voluntarily seek dissolution u/s 248(2) of the Act if given an opportunity; Holds that inasmuch as the Company is not carrying out any business and its bank account has not been operated for over three years, Petitioners ought to be provided the benefit under the Scheme and directs Petitioners to file hardcopies of all requisite documents with the ROC; Directs that the impugned list of disqualified directors, to the extent that it includes the name of the Petitioner be stayed till March 31, 2018 or up till such time as the Respondents take a final decision in the matter:Delhi HC

[\[LSI-74-HC-2018\(DEL\)\]](#)

HC: Permits disqualified Directors to file returns under CODS in hard copies

Delhi HC grants interim relief to Directors disqualified u/s 164(2)(a) of the Companies Act, 2013 ('the Act') ('Petitioners') by Registrar of Companies ('Respondent/ RoC'); Notes that Petitioners had defaulted in filing statutory returns with ROC for a continuous period of 3 years leading to their disqualification as well as striking off of Companies' names in which Petitioners were Directors u/s 248(1) of the Act; Takes note of Petitioners' contention that Respondents' action were not as per the prescribed manner and in gross violation of the principles of natural justice; Directs Respondents to activate the Director Identification Number of Petitioners in whose favour interim order (staying the effect and operation of Respondents' notices) was passed; Further on perusal of the Condonation of Delay Scheme, 2018 ('CODS') observes that Respondents were accepting returns under the Scheme only in e-format, thus in order to balance equities and to ensure that no prejudice is caused to any party permits Petitioners (in whose favour interim orders were passed) to file compliances under the CODS in hard copies on payment of requisite fees:Delhi HC

[\[LSI-141-HC-2018\(DEL\)\]](#)

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