

**NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH**

Co. Appeal No. 53/252(3)/NCLT/AHM/2019

Coram: Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER (JUDICIAL)  
Hon'ble Mr. PRASANTA KUMAR MOHANTY, MEMBER (TECHNICAL)

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH  
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 06.11.2019**

Name of the Company: Vinod Tarachand Agrawal  
(J.R.Diamonds Pvt Ltd)  
V/s  
ROC Gujarat

Section of the Companies Act : Section 252(3) of the Companies Act 2013.

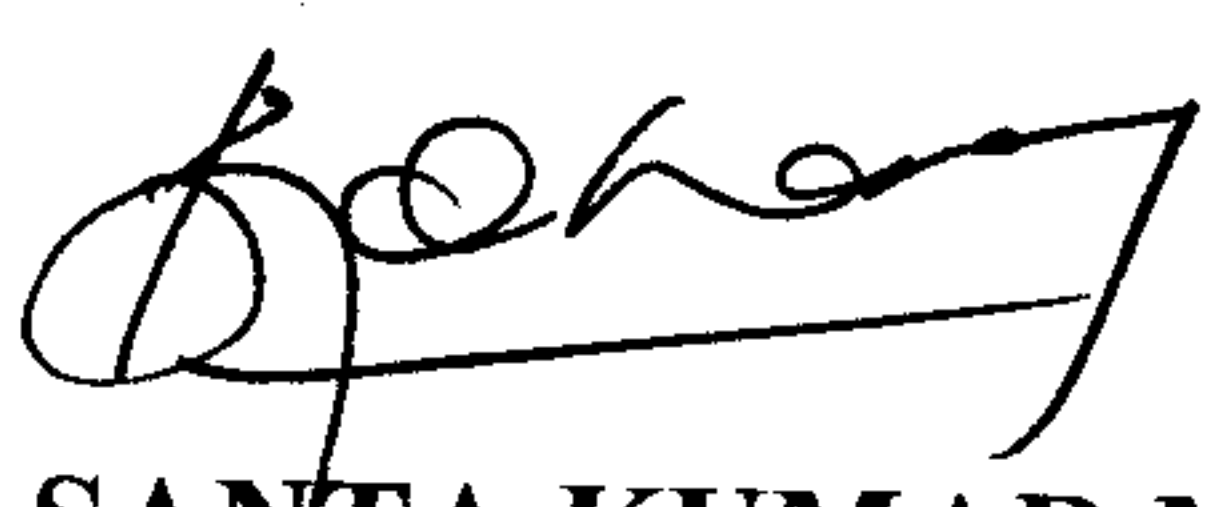
| <u>S.NO.</u> | <u>NAME (CAPITAL LETTERS)</u> | <u>DESIGNATION</u> | <u>REPRESENTATION</u> | <u>SIGNATURE</u> |
|--------------|-------------------------------|--------------------|-----------------------|------------------|
| 1.           | Nipun Singhvi                 | Adm.               | Applicant             | n                |
| 2.           | Vishal J. Dave                |                    |                       | v                |
|              | Pragati Tiwari                | Pcs                |                       | P                |
|              | Abhishek Chajjed              |                    |                       | A                |


**ORDER**

The Appellant is represented through their respective Learned Counsel(s).

The case is fixed for pronouncement of order.

The Order is pronounced in the open court, vide separate sheet.

  
(PRASANTA KUMAR MOHANTY)  
MEMBER (TECHNICAL)

  
(HARIHAR PRAKASH CHATURVEDI)  
MEMBER (JUDICIAL)

Dated this the 6th day of November, 2019.

**BEFORE NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH**

**Co. Appeal No. 53/252(3)/NCLT/AHM/2019**

**In the matter of:**

**M/s. J. R. Diamonds Pvt. Ltd.**

**In the matter between:**

Vinod Tarachand Agrawal  
Liquidator of the Company:  
M/s. J. R. Diamonds Pvt. Ltd.  
204, Wall Street-1,  
Near Gujarat College,  
Ellisbridge,  
Ahmedabad – 380 006.

..... Appellant

**Versus**

Registrar of Companies,  
ROC Bhavan, Opp. Rupal Park,  
Nr. Ankur Bus Stand,  
Naranpura,  
Ahmedabad-380 013,  
Gujarat.

.....Respondent

**Order delivered on 6<sup>th</sup> November, 2019.**

**Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (J)  
Hon'ble Mr. Prasanta Kumar Mohanty, Member (T)**

**Appearance:**

Mr. Nipun Singhvi, Mr. Vishal J. Dave along with Ms.  
Pragati Tiwari, Advocates for the Appellant.  
None for the Respondent.

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**ORDER**

**[Per: Mr. Harihar Prakash Chaturvedi, Member (Judicial)]**

1. The present Company Appeal is filed seeking for restoration of the name of the company i.e. M/s. J. R. Diamonds Pvt. Ltd. in the statutory register of companies being maintained by the Registrar of Companies, Gujarat [The "ROC" for short] which came to be struck by its impugned order dated 06.08.2018.

Being aggrieved with such impugned action, the present appellant, being the Liquidator of the deregistered company has preferred the present appeal and has prayed for certain reliefs from this Tribunal, describing as under:

- (i) To restore name of the company in register of Registrar of Ahmedabad, Gujarat.**
- (ii) To pass an appropriate order under Section 252(1) of the Companies Act, 2013, to bring an end to status of strike off of company in the matter, i.e. M/s. J. R. Diamonds Pvt. Ltd. to allow exemption to file annual returns required to be filed and to pay filing fees thereon for the year 2014 to 2018.**
- (iii) To pass the order to bank informing the revival of company and restoration of company's name in the Registrar of Companies to make the bank account active.**

2. The brief facts raising to the present appeal are stated as under: -

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M/s. J. R. Diamonds Pvt. Ltd. was originally incorporated on 08.11.1977 as a Private Limited Company, limited by shares in the name of M/s. J. R. Diamonds Pvt. Ltd. The company was incorporated vide Corporate Identity Number (CIN): U36912GJ1977PTC072127 under the provisions of the Companies Act, 1956. As submitted, the Director of the company are Mr. Shailesh Babulal Shah (DIN: 00337018) since 05.03.2010 and Mr. Dharmendra Shambhubhai Ruparelia (DIN: 05242889) since 27.07.2016.

3. The Company was having authorized share capital of Rs.25,00,000/- (Rupees Twenty-Five Lakhs Only) divided in to 2,50,000 (Two Lakh Fifty Thousand) equity shares of Rs.10/- (Rupees Ten) each.

The paid up capital of the company is also stated to be Rs.25,00,000/- (Rupees Twenty-Five Lakhs Only) divided in to 2,50,000 (Two Lakhs Fifty Thousand) equity shares of Rs.10/- (Rupees Ten) each.

4. The PAN of the company is AAACJ1241R. The registered office of company is situated at: Ashoka Tower, Kesharba market-2, Gotalawadi, Katargam, Surat, Gujarat - 395004, India.

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5. It is reported that this Tribunal vide its Order dated 13.02.2018 passed in C.P.(IB) No. 205/9/NCLT/AHD/2017 has admitted the I.B. Petition filed under Section 9 of the I.B. Code in respect of Corporate Debtor, M/s. J. R. Diamonds Pvt. Ltd. and appointed Mr. Vinod Tarachand Agrawal (i.e. the present Appellant) as an Interim Resolution Professional. Later on, the Appellant was further confirmed by the CoC to be the Resolution Professional. Thereafter, this Tribunal vide its order dated 01.10.2018 further appointed him as the Liquidator of the Company. The Appellant has stated that at the time of initiation of Corporate Interim Resolution Process ("CIRP") in respect of the company, it was having "Active" status.
6. The Appellant, after his appointment as a Liquidator duly informed the Respondent (i.e. ROC) vide his letter dated 20.12.2018 about the order of this Tribunal for the Liquidation of the company, however, it is submitted that no reply from the Respondent was received.
7. However, during the liquidation process of M/s. J. R. Diamonds Pvt. Ltd, the Appellant, being a Liquidator came to know this fact from the web-portal of the Ministry of Corporate Affairs that the name of the company has been struck off.

8. It is submitted that M/s. J. R. Diamonds Pvt. Ltd. at the time of its deregistration was having assets over Rs.81,26,35,384/- as on 31.03.2017 which includes company's investment in preference shares of M/s. Peacock Jewellery Ltd. amounting to Rs.4,50,00,000/-.
- It is contended that the said preference shares are matured and the payment recovery is due with M/s. Peacock Jewellery Ltd, for which the Appellant, being a Liquidator has filed a Petition before the Hon'ble NCLT, Bengaluru vide Petition No. C.P.(IB) No. 213/BB/2018 on 10.08.2018 against M/s. Peacock Jewellery Ltd. which is pending as on date of filing of this Application.
- Hence, in view of this, the name of the company ought not to have been struck off.**

9. It is alleged that the Registrar of the Companies, Gujarat, Ahmedabad vide its notice no. ROC/AHMD/248(5)/STK-7/PUB/1/2018 dated 06.08.2018 (issued in Form No. STK-7) (followed by a final notice issued under sub-section (5) of Section 248 of the Companies Act, 2013), has struck off the name of the Company from its register with effect from 06.08.2018 mainly on such reason that the Company failed in filing its Financial Statements & Statutory Annual Returns from F.Y. 2013-14 onwards and Annual Returns from F.Y. 2014-15 onwards with the

Respondent ROC under the provision of Companies Act within prescribed period to the ROC, Gujarat.

10. It is contended that the respondent, ROC did not follow the procedure prescribed under Section 248(1) of the Companies Act, 2013 and no statutory notice under Section 248 (1) was received by the Liquidator of the company. It is stated that the Respondent ROC has got published the notification in the official gazette for striking off the name of the company.
11. A copy of relevant extract/page of the Gazette Notification, showing notice to strike off companies name under Section 248(1) in STK-5 and further intimation of striking off the name of company under Section 248(5) in STK-7 of the Companies Act, 2013 have been annexed with the present appeal.
12. In response to the present appeal, the ROC, Gujarat, being Respondent has filed its Representation affidavit dated 29.04.2019 and opposed the present appeal by contending that the present company appeal is not maintainable because the company had failed in filing its statutory returns, i.e. Financial Statements and Annual Returns for a continuous period of more than two years. Hence, the ROC was required to initiate above stated statutory action under Section 248(1) of

the Companies Act, 2013 against the deregistered company.

13. Notwithstanding the above, the ROC in its representation has further submitted that this Tribunal may pass appropriate order for restoration of the name of the company but subject to fulfilment of certain conditions that may be imposed by this Court as described below:

***“1) The company will file all the overdue statutory returns viz. Financial Statements and Annual Returns for the years which have not been filed and also other event based documents if any, with fees and additional fees as required under the Companies Act, 2013.***

***2) The publication of notice in two leading newspapers circulating in the district and official Gazette of Government of India, in regard to the restoration of the name of the company on the register maintained in the office of the Respondent as per the draft approved by the Respondent, at the cost of the petitioner.***

***3) The petitioner will ensure that the Company will not make any default in filing of statutory returns in future as required under the Companies Act, 2013.***

***4) The Hon'ble Tribunal may please be direct the petitioners to pay cost as may deemed fit and proper to the Registrar of Companies for restoring the name of the company under Section 252(3) of the Act as the Respondent had incurred expenditure***

**on sending notices, publication of notices in newspaper and official Gazette in respect of striking of Companies.....”**

14. In the present matter, the Income Tax Department did not file its reply even after issuance of notice.

15. In the light of above given facts and circumstances of the case, we examined the merits of the present appeal. The appellant preferred this appeal being a Liquidator of the deregistered company. Hence, he is competent for filing the same, to seek restoration of the company's name in the register of the ROC.

16. We further examined the relevant provisions of Section 252(1) and 252(3) of the Companies Act which reads as under:

*“(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 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*

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*the name of the company had not been struck off from the register of companies.”*

17. As per record, the name of the company, M/s. J. R. Diamonds Pvt. Ltd., was struck off on 06.08.2018 from the statutory register of companies which followed by a Gazette notification published in this respect. While, this Court, vide its order dated 13.02.2018 has already admitted the I.B. Petition and the C.I.R.P. under the provision of the I.B. Code was commenced on with effect from 13.02.2018 and the moratorium was declared under Section 14 of the I.B. Code on the effect of such statutory declaration. No proceedings against the company could have been legally initiated nor the provisions of Section 248 of the Companies Act have been invoked during such moratorium period. Therefore, the appeal filed by the Liquidator of the Company on 26.03.2019 is found to be in order and within the time limitation.

18. That apart, the relevant circular issued by the Ministry of Corporate Affairs in respect of removal of name of company from the Registrar of Companies by giving clarification in this regard (vide general circular no. 16 of 2016 dated 26<sup>th</sup> December, 2016) speaks such that **the provision of Section 248 may not be applicable in respect of such companies against which any**

**prosecution for an offense is pending or its application for compounding of offense is pending or any investigation is going on pursuant to order of court are being carried out / are being contemplated by a competent authority, then, the name of the company ought not be removed.**

19. Our contention finds support from a decision of the Hon'ble Delhi High Court in the matter of **M. A. Panjwani Vs. Registrar of Companies & Anr. (2015) 192 Comp. Case 380 Dec.** wherein, the Hon'ble Delhi High Court pleased to held that, when there is a litigation pending by or against the company before any competent court of law, in such peculiar facts and circumstances, striking off the name of a company by the ROC was not justified. Thus, such company was ordered to be restored. This Legal Position has been reiterated by the Hon'ble High Court, Andhra Pradesh & Telangana in the matter of **Velamati Chandrasekhara Janardan Rao v/s M/s. Sree Raja Rajeswari Paper Mills Limited & Another (2016) 198 Comp.Cas335 (AP)**. For the sake of convenience, the relevant Para of the aforesaid decision may be reproduced herein below:

*"11. In M.A. Panjwani v. Registrar of Companies [2015] 192 Comp Cas 380 (Delhi) considered the scope of section 560(6) and the meaning of words "otherwise just" held as follows (pages 386, 388 and 389 of 192 Comp Cas) :*

"Under sub-section (6) of section 560 of the Companies Act, 1956, the company court has the power to order restoration of the company's name to the register of companies on the application made by the company itself or its member or creditor. Such an application can be made at any time before the expiry of 20 years from the publication of the notice for striking off the name published in the Official Gazette. There are only two circumstances in which the company court can exercise the power. The first is when it is satisfied that the company was, at the time of the striking off of its name from the register, carrying on business or was in operation. The second circumstance is when it appears to the company court that it is 'otherwise just' that the name of the company be restored to the register. Obviously the petitioner is not the company itself and, therefore, he has to be either a member or creditor. It was submitted on behalf of the Registrar of Companies that the petitioner is neither a member nor a creditor of the company...

Quite apart from the above position, the sub-section recognises that if the court is of opinion that it is 'otherwise just' that the company be restored to the register, restoration can be ordered. The argument addressed on behalf of the Registrar of Companies to the effect that the word 'just' has to be understood in the background of the specific language of the sub-section on the basis of the principle of ejusdem generis does not appeal to me. As I read the sub-section, there are two situations in which the company court can order restoration. One is when the company was carrying on business or was in operation at the time of striking off its name. The second situation, which is an alternative situation, is one where it appears 'just' to the company court that the name of the company be restored to the register. I do not see any scope for the application of the rule of ejusdem generis because of the presence of the words 'or otherwise' between the words providing for the two types of situations. **The presence of the words 'or otherwise' denotes that even if the company was not carrying on any business or was not in operation at the time of striking off, it is still**



**open to the company court to order restoration if it appears to the court to be 'otherwise just'.** I may add that the words 'or otherwise' have not been generally construed ejusdem generis as seen from the judgments of the Supreme Court in *Smt. Lila Vati Bai v. State of Bombay*, AIR 1957 SC 521 and *Kavalappara Kottarathil Kochuni alias Moopil Nayar v. States of Madras and Kerala*, AIR 1960 SC 1080.

In *Mrs. Helen C. Rebello v. Maharashtra State Road Transport Corporation* [1999] 95 Comp Cas 509 (SC) : [1999] 1 SCC 90, **it was observed by the Supreme Court that the word 'just' denotes equitability, fairness and reasonableness having a large peripheral field, hi understanding its scope, one must take into account all the facts and circumstances of the case and then decide what would be just and equitable.** In *M.A. Rahim v. Sayari Bai*, AIR 1973 Mad 83, it was held by a Division Bench of the Madras High Court that the word 'just' connotes reasonableness and something conforming to rectitude and justice, something equitable and fair. In *Siddhant Garg v. Registrar of Companies* [2012] 171 Comp Cas 326 (Delhi) it was held by this court (Manmohan J.) **that the word 'just' would mean that it is fair and prudent from a commercial point of view to restore the company and that the court has to examine the concept of 'justness' not exclusively from the perspective of a creditor or a member or a debtor, but from the perspective of society as a whole.** The special facts of the present case attract this principle. The respondent has received monies from the petitioner. He was entrusted with the job of finding a house for the petitioner in Delhi. The averments in the petition prima facie indicate that the property 'Jodhpur Gardens' was purchased not in the name of the petitioner but in the name of the company. The shares held by the petitioner in the company were also taken away from him without his knowledge or consent. The settlement entered into between Quli and Singhania by which the shares were transferred to Quli was held by this court to be collusive. These are disputes which are pending in the trial court. The company is a defendant in the trial court. If its

name is not restored, it would cause injustice to the petitioner and also cause prejudice to the trial as a whole. The message sent to the society as a whole, if the name of the company is not restored to the register, would be quite disturbing. The petitioner has to be protected in the litigation pending before the trial court. **As observed by the Indore Bench of the Madhya Bharat High Court in Bhogilal Chimanlal v. Registrar of Joint Stock Companies [1954] 24 Comp Cas 279 (MB) : AIR 1954 MB 70, the effect of the order of the Registrar of Companies striking off the name of the company from the register would be that the company will be deemed to be dissolved and it may be difficult for the petitioner to obtain any relief in the suit pending before the trial court. It is not also known whether the company had brought to the notice of the Registrar of Companies about the pendency of the litigation in the trial court. If it had, perhaps the Registrar of Companies would not have struck off the name from the register."**

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13. Further, the pleadings and other material filed in the petition show that the assets owned and held by the company were not within the knowledge of the persons who were on the board when the resolution was passed to request for striking off the name of the company. The petitioner was the chairman when a request was made. Therefore, on coming to know full details and information on the assets of company with a view to enabling company to claim its assets or administer for the benefit of shareholders prays for restoration of the name in the register. **In the considered view of this court, with the striking off the name of the company, the legal and corporate entity enjoyed by the company under the Act is completely denuded. Therefore, for all purposes, it became dead or non-existing in the eye of law. Therefore, either to claim the assets of company or answer the claims of third parties against the company, the restoration of company in the register of**

**companies is otherwise just.** Therefore, this court holds that the petitioner, though was not aggrieved on the day when the application was made, but with the acquisition of subsequent knowledge or information about the assets of the company, the petitioner being the ex-chairman/shareholder of the company is a person aggrieved against the striking off the name of company from the register and can apply for cancelling the striking off and restoring the name in the register. **Hence, a case is made out that otherwise it is just and proper to restore the name of the company in register.**

14. For the above reasons, **the company petition is ordered, striking off name of the company is cancelled and the Registrar is directed to restore the name of M/s. Sree Raja Rajeswari Paper Mills Ltd. in the register maintained by the Registrar of Companies.** The petitioner is directed to take such other or further steps as are required under the Act to formalise the restoration of company. The company petition is ordered as indicated above.”

20. By perusal of the material available on record it is evident that the main reason shown for striking off the name of the Company, i.e. M/s. J. R. Diamonds Pvt. Ltd. was that the deregistered company had failed in filing its statutory returns (e.g. Balance Sheets, Annual Returns) before the ROC. However, **when the order impugned for striking off the name of the company was passed, the company was under the C.I.R.P. and thereafter gone into liquidation process by an order dated 01.10.2018 of the NCLT passed under Section 33 of the I.B. Code.** Hence, the liquidator took over the charge of the assets of the Corporate-Debtor-Company

(now under deregistration). Hence, such impugned action cannot be treated a legally valid and just action on the part of ROC to strike off the name of the Company during Corporate Interim Resolution Process, which is reported to have pending litigation. All such action also is not in conformity with the provisions of Section 14 of the I.B. Code by declaring moratorium of the company and making certain prohibition for taking action or legal proceedings against them. The relevant portion of Section 14 is reproduced here in below:

*“(1) Subject to provisions of Sub-Sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following namely:-*

*(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;*

*(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;*

*(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of financial assets and enforcement of security interest act, 2002, (54 of 2002);*

*(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.*

*(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be*

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*terminated or suspended or interrupted during moratorium period.*

*[(3) the provisions of sub-section (1) shall not apply to –*

*(a) Such transaction as may be notified by the Central Government in consultation with any financial regulator;*

*(b) a surety in a contract of guarantee to a corporate debtor.]*

*(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:*

*PROVIDED that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.”*

21. In addition to the above, present impugned action is inoperative and void in law because of the provision of Section 238 of the I.B. Code is having overriding effect on other law.

*“The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.”*

**Hence, on such ground also, the impugned order dated 06.08.2018 to strike off the name of the company, so far as it relates to the present company is set aside.**

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22. Having considered the above stated aspects of the present appeal, we feel it just and equitable that the name of company needs to be restored in view of above stated legal position and name of the company should not been struck off, if there is some pending litigation by or against the Company.
23. Hence, the present Company Appeal deserves to be allowed and the name of the company, i.e. M/s. J. R. Diamonds Pvt. Ltd. to be restored in the statutory register of Companies being maintained by the Respondent, ROC, Gujarat for above mentioned limited purpose.
24. With the aforesaid observation and direction, the present appeal is conditionally allowed. In the result, the Registrar of Companies, Gujarat is hereby directed to restore the name of the Company in its statutory register of Companies but subject to compliance of following conditions by the appellant/company:
- (i) *The **Appellant/Liquidator** shall file all over due statutory returns **on behalf of the company**, if any, with fee and imposed penalty and additional fee, if any, as required under the Companies Act; and other laws within stipulated period stated therein, or within 90 days from the receipt of an authentic copy*


of this order and after restoration of its name in the Register of ROC, Gujarat.

- (ii) The **Appellant/Liquidator** shall publish a Notice in leading newspapers circulating in the District as well as in the Official Gazette of the Government of India with regard to the restoration of the name of the Company in the Register of Companies maintained by the Office of the Registrar of Companies, as per the draft notice approved by the Registrar of Companies at the expenses of the Appellant;
- (iii) Before compliance of the statutory requirements of the Registrar of Companies, the **Appellant/Liquidator** shall verify and settle the statutory as per the provisions of the I.B. Code.

25. The **Appellant/Liquidator** to communicate a copy of this order to the ROC as well as to the Income Tax Department/ other statutory authorities.

26. With the aforesaid direction/ observation, the present appeal is conditionally allowed and stands disposed of.

  
(Prasanta Kumar Mohanty)  
Member (Technical)

  
(Harihar Prakash Chaturvedi)  
Member (Judicial)

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