

**THE NATIONAL COMPANY LAW TRIBUNAL  
CHANDIGARH BENCH (COURT-II), CHANDIGARH**

**IA No. 175 of 2022  
In  
CP(IB) No.107/Chd/CHD/2021  
(Admitted)**

**Under Section 9 & 60(5) of the IB  
Code, 2016 read with Section 252  
of the Companies Act, 2013**

**In the matter of:**

**1. Nitin Kalra, S/o Sh. Harbhagwan Kalra,**

having its residence at  
Flat No. 2337, Goodwill Enclave,  
Sector-47, Chandigarh- 160047

**2. Suresh Kumar, S/o Sh. Hardeva Ram,**

having its residence at  
2600, Phase-11, SAS Nagar,  
Mohali-160062

....Petitioners/Operational Creditors

**Versus**

**M/s Sanskriti Golden Oak Real Estate Private Limited**

having its Registered Office at  
House No. 639, Sector 11-B,  
Chandigarh-160011

....Respondent/Corporate Debtor

**AND**

**IA No. 175 of 2022**

**Navneet Kakkar,**

Resolution Professional

Sanskriti Golden Oak Real Estate Private Limited

....Applicant



**Versus**

**1. Registrar of Companies-Punjab and Chandigarh**

Corporate Bhawan, 1st Floor  
Plot No. 4-B, Madhya Marg,  
Sector 27-B, Chandigarh-160019

**2. Income Tax Department, Chandigarh**

**Through** Nodal Officer,  
Aayakar Bhawan, 2nd Floor,  
Sector-17E, Chandigarh- 160017

...Respondents

**Order delivered on: 12.01.2024**

**Coram: HON'BLE DR. P.S.N PRASAD, MEMBER (JUDICIAL)  
HON'BLE MR. UMESH KUMAR SHUKLA, MEMBER (TECHNICAL)**

**Present :-**

For the Petitioner : Mr. Vishav Bharti Gupta, Advocate  
Income Tax Department: Mr. Yogesh Putney, Senior Standing Counsel

**PER: DR. PSN PRASAD, MEMBER (JUDICIAL)  
MR. UMESH KUMAR SHUKLA, MEMBER (TECHNICAL)**

**ORDER**

1. This Interlocutory Application(hereinafter referred to as "Application") has been filed under Section 60(5) of the IB Code, 2016 read with Section 252 of the Companies Act, 2013 for and on behalf of Mr. Navneet Kakkar, Resolution Professional of "**Sanskriti Golden Oak Real Estate Private Limited**" (hereinafter referred to the corporate debtor) seeking the revival and restoration of the name of the corporate debtor in the Register of Companies, maintained in the office of the Registrar of Companies, Punjab and Chandigarh.



2. It is stated in the application that earlier a petition under Section 7 of the IB Code, 2016 was filed by joint petitioners namely “Mr. Nitin Kalra and Mr. Suresh Kumar” for initiating Corporate Insolvency Resolution Process (“CIRP”) against “Sanskriti Golden Oak Real Estate Private Limited” before the this Adjudicating Authority, which was admitted vide order dated 21.12.2021 and Mr. Navneet Kakkar was appointed as the Interim Resolution Professional (hereinafter referred to as “IRP”). A copy of the order dated 21.12.2021 admitting the Application and thereby appointing Mr. Navneet Kakkar as IRP has been attached along with the application as Annexure-1.

3. It is further stated in the application that in compliance of the General Circular No.08/2020 dated 06.03.2020, the IRP initiated the filing of INC-28 with the MCA for intimation of the said CIRP order. The efforts made for filing the e-form INC-28 could not be materialized through online mode, as the status of corporate debtor was showing “Strike Off”, therefore the IRP duly sent an intimation letter along with the physical copy of INC-28 to the ROC-Punjab and Chandigarh, which was received by them on 06.01.2022. A copy of the intimation letter along with master date from MCA of corporate debtor has been attached along with the application as Annexure-2.

4. It is further stated in the application that during the course of the 1<sup>st</sup> meeting of creditors, applicant informed the members of Committee of Creditors that the current status of the corporate debtor on the MCA website was showing as “Struck Off”, for which written communication has already been sent to the RoC-Punjab and Chandigarh for intimating the admission of the corporate debtor into CIRP and the RoC, vide letter dated 31.01.2022, has intimated that the company “Sanskriti Golden Oak Real Estate Private Limited” has been struck off from Register of Companies as per the provisions of the Companies Act, 2013 and the current status as per MCA 21




portal is "Strike Off". A copy of the letter dated 31.01.2022 sent by RoC-Punjab and Chandigarh has been attached along with the application as Annexure-3.

5. It has been submitted by the applicants in the application that CIRP cannot be proceeded further for a company, which does not exist in the records of MCA and therefore, the claims of the creditors cannot be attended to in respect to a corporate debtor, whose name has been struck off, causing grave injustice to the claimants.

6. In view of the above facts and circumstances mentioned in the application, applicant has sought the direction of this Tribunal for restoring the status of corporate debtor as active, so as to conduct the CIRP of corporate debtor in the interest of its creditors. The applicants have made the following prayers in the application: -

- (a) Direct Registrar of Companies-Punjab and Chandigarh to issue its Status Report on the present status of the Company along with detailed reasons for striking off the name of the company from the Register of Companies maintained by it;
- (b) Set aside/quash the orders passed by the Registrar of Companies-Punjab and Chandigarh of 'Striking off' the name of the company from the Register of Members as maintained;
- (c) Direct the Registrar of Companies-Punjab and Chandigarh to restore the name of the Company to its Register and direct for placing the petitioner company in the same position as nearly as may be as, if the name of the company had not been struck off at all;
- (d) Exclude the time period from admission of Section 7 petition till restoration of the name of the corporate debtor, from the CIRP period in view of the fact that the CIRP could not be undertaken during pendency of final



adjudication of this restoration application, since the corporate debtor is not in existence;

- (e) Pass such other further order/order(s) as may be deemed fit and proper in the facts and circumstances of the instant case.

7. This Tribunal, vide order dated 06.10.2022, has directed to issue notice of this application to the concerned Registrar of Companies as well as Income Tax Department through the Nodal Officer-Principal Chief Commissioner of Income Tax, NWR, Aaykar Bhawan, Sector 17-E, Chandigarh.

8. The reports of Income Tax Department and Registrar of Companies have been filed vide diary No.361/6 dated 03.01.2023, and diary No.361/7 dated 24.01.2023 respectively.

9. As per the reports of the Income Tax Department, no demand is outstanding against the company nor any proceedings are pending. It is prayed in the report that the interest of revenue be protected and the Resolution Professional is directed to make a provision for payment of demand, if any, found later on.

10. The Registrar of Companies in its report has submitted that the company had filed its last annual returns and financial statements for the financial year 2015-2016 and thereafter, no annual returns and financial statements have been filed by the company for a period of almost 3 years, till 2019. It is further stated in the report that the company filed e-form STK-2 vide SRN H83303446 dated 18.08.2019 through online mode with the Registrar of Companies, Punjab & Chandigarh for removing its name from the register of Companies and the same was approved. However, the Company was struck off in the Gazette notification in terms of section 248 of the



Companies Act, 2013 which was published notifying the names of companies which were struck off vide notification dated 25.07.2020. It is further stated in the report that Mr. Ravi Garg, Director of the company along with e-form STK-2, had submitted indemnity bond dated 13.08.2019 giving undertaking and indemnity in writing along with aforesaid STK-2:

- a) the claimants for all lawful claims against the company arising in future after the striking off the name of the company
- b) any person for any losses that may arise pursuant to striking off the name of the company
- c) that the claimants for all lawful claims and liabilities, which have not come to notice up to this stage, and if any claim arises or observed even after the name of the company has been struck off in terms of Section 248 of the Companies Act, 2013.

11. The Registrar of Companies in its report has prayed that resolution professional may be directed to file all the pending documents including all the due annual returns and financial statements along with the requisite fee and additional fee, as prescribed in the Rules and the cost may be imposed on the petitioner company and its directors for avoiding filing of the statutory documents like annual returns and financial statements on the MCA portal.

12. The applicants have filed the affidavit, vide diary No.0036/9 dated 19.05.2023, in which they have stated that as per the report of the Registrar of Companies, the company filed e-form STK-2 vide SRN H83303446 dated 18.08.2019 along with indemnity bond dated 13.08.2019, giving undertaking and indemnity in writing through online mode with Registrar of Companies, Punjab & Chandigarh for removing its



name from register of Companies. As the e-form STK-2 can only be filed by company, if there is NIL statement of account, but there is suppression of actual facts by the ex-director of the company. The resolution professional in its affidavit filed vide diary number 00361/10 dated 22.09.2023 have further submitted that Mr. Ravi Garg, director of the company submitted Form STK-2 and indemnity bond dated 13.08.2019 giving declaration that the Company does not have any assets and liabilities, however the Title search report dated 25.06.2022 prepared by the advocate shows that there are assets in the company at the time of filing of the Form STK-2 with the Registrar of Companies, Punjab and Chandigarh. It is therefore concluded in the affidavit that the above mentioned facts shows that there is suppression of actual figures by the Ex Director of the Company.

13. We have considered the submissions of the learned counsel on behalf of the petitioner; perused the report of Registrar of Companies, Punjab and Chandigarh as well as the Income Tax Department and other documents placed on record and have also examined the relevant provisions of the companies Act, 2013. Under section 248 of the Companies Act 2013, 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 and 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. The Registrar, before passing an order, 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. Further, notwithstanding the undertakings referred above, 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. Further, 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, shall continue and may be enforced as if the company had not been dissolved.

14. The section 252 of the Companies Act, 2013 prescribes that 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.

15. The NCLT New Delhi Bench Court-IV in the matter of Mr. Satyabrata Mitra & Ors versus Earth Towne Infrastructure Pvt Ltd, IB/196/ND/2023 has held that,

*“14. Further, according to the provisions of Section 248(8) of the Companies Act, 2013, the Tribunal may order winding up of a Company, the name of which has been struck off, but no power can be exercised by the Tribunal for Insolvency Resolution under the Insolvency and Bankruptcy Code, 2016, unless the name of the Company is restored to the Register of Company in terms of procedure laid down under Section 252 of the Companies Act, 2013. The power of the Tribunal to restore the name of a struck off company under Section 252 of the Companies Act, 2013 is not a suo motu power, but is to be exercised either on the basis of an appeal filed by any aggrieved person under Section 252 (1) or to be exercised on an application filed by the Companies, its members or creditors or workmen aggrieved by the order of striking off under Section 252(3) of the Companies Act, 2013.....”*



16. From the facts and circumstances of the case, this Tribunal is of the opinion that the removal of the name of the company from the register of the companies is not justified, in view of the suppression of facts committed by Mr. Ravi Garg, Ex Director of the corporate debtor, in the affidavit as well as in the application filed for striking off the name of the company from the Register of Companies. Moreover, in view of the fact that the Corporate Insolvency Resolution Process cannot be carried out for a company which does not exist in the records of MCA unless the name of the Company is restored to the Register of Company, therefore, this Tribunal is of the view that in the interest of justice, it would be just, equitable and fair that the name of the company be restored to the Register of companies and, in the exercise of the powers conferred on it under Section 252 of the Companies Act, 2013, orders that:

- a) Registrar of Companies, Punjab and Chandigarh the respondent herein, is directed to restore the original status of the Petitioner company, as if the name of the company had not been struck off from the Register of Companies with the resultant, and consequential actions like changing status of petitioner company from 'struck off' to 'active'.
- b) Resolution professional, stepped into the shoes of the erstwhile management and is directed to file all pending documents including all the due annual returns and financial statements, along with the requisite fee and additional fee, as prescribed in the Rules and fines, as decided by Registrar of Companies, Punjab and Chandigarh, at the earliest date, from the date on which its name is restored on the Register of Companies maintained by the Registrar of Companies, Punjab and Chandigarh.



- c) Resolution Professional is directed to protect the interest of revenue and make a provision for payment of demand, if any, found later on as per the provisions of law.
- d) The Income Tax Department may look into the non-filing or belated filing of the Income Tax Returns of the Company for any of the assessment years and also for recovery of outstanding demand if any.
- e) The Applicant is directed to deliver a certified copy of this order to the Registrar of Companies, Punjab and Chandigarh, at the earliest on receipt of this order.
- f) On such delivery and after due compliance with the above directions, the Registrar of Companies is directed to publish the order in the official gazette under his office, name and seal.
- g) This order is confined to the violations, which ultimately led to the impugned action of striking off the name of the company. It will not come in the way of the Registrar of Companies, Punjab and Chandigarh, to take appropriate action in accordance with the law for any other violation/offences, if any, committed by the Petitioner Company prior to or during the period when the name of the company remained struck off.

17. With regard to point (d) of the prayer in the application, Resolution Professional may move a separate application under the provisions of IB Code 2016.

18. With regard to submission of wrong affidavit filed by the Ex Director Sh. Ravi Garg, the Resolution Professional and Registrar of Companies, Punjab and Chandigarh may take appropriate action, as per the law.



19. In view of the above, the present application U/s 60(5) of the IB Code, 2016 read with Section 252 of the Companies Act, 2013 is allowed.

20. The Registry is directed to send e-mail copies of the order forthwith to all the parties including the Resolution Professional/ his Counsel.

Sd/-

**(Umesh Kumar Shukla)**  
**Member (Technical)**

January 12, 2024

Vishesh

Sd/-

**(Dr. P.S.N. Prasad)**  
**Member (Judicial)**