



NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH
COURT NO. 1

ITEM No.201
Co.Appeal/3(MP)2022

Order under Section 252(3)

IN THE MATTER OF:

Department of Income Tax through Principal Commissioner
of Income Tax-1, Indore

V/s

ROC Gwalior MP & Anr

.....Applicant

.....Respondent

Coram:

Hon'ble Shri Brajendra Mani Tripathi, Member (J)

Hon'ble Shri Man Mohan Gupta Member (T)

PRONOUNCEMENT OF ORDER

Delivered on 04/05/2026

The case is fixed for pronouncement of the order.

The order is pronounced in open Court *vide* separate sheet.

Sd/-

**MAN MOHAN GUPTA
MEMBER (TECHNICAL)**

Tomar

Sd/-

**BRAJENDRA MANI TRIPATHI
MEMBER (JUDICIAL)**



IN THE NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH

COMPANY APPEAL 3 OF 2022

(In the Matter of Section 252(3) of the Companies Act, 2013)

IN THE MATTER OF:

Department of Income Tax

Through Pr. Commissioner of Income Tax-1,
Indore. Having Office at:
Main Building Aaykar Bhavan,
Opp. White Church, Indore

.....**Petitioner**

V/s

The Registrar of Companies, Gwalior

Office- ROC Bhavan, 3rd Floor, 'A' Block,
Sanjay Complex, Jayendra Ganj,
Gwalior, Madhya Pradesh - 474009

ADAPTEC REAL ESTATE PRIVATE LIMITED.

I-606, LIG Quarters,
Indore -452001, Madhya Pradesh,
India.

..... **Respondent**

Order pronounced on:04.05.2026

Coram:

Shri Brajendra Mani Tripathi, Hon'ble Member (J)

Shri Man Mohan Gupta, Hon'ble Member (T)

Appearance:

For the Applicant: Mr. Harsh Parashar, Adv. a.w.

Ms. Yashika Bondwal, Adv.

For the Respondent: Mr. Rajat Lohia, Adv.



JUDGEMENT

1. This is a Company Appeal No.3/MP/2022 filed under Section 252(3) of the Companies Act, 2013 (**the ‘Act’**)

The Applicant’s case in brief

2. It is submitted that the Company **M/s Adaptec Real Estate Private Limited** was incorporated on 14.05.2009 under the Companies Act, 1956 having Corporate Identity Number(CIN) **U70102MP2009PTC021910**. The said Company was engaged in contractorship activities. It is further submitted that the certificate of incorporation was issued by the Registrar of Companies, Gwalior and the Company was having Mr. Nilesh Kaushal and Mrs. Lalita Chauhan as its Directors.
3. It is submitted that the name of the Company was struck off from the Register of Companies and stood dissolved with effect from 05.05.2016 and notice to that effect was published in the official gazette. A copy of the said notice/order is annexed as **Annexure-A**.
4. It is submitted that reassessment proceedings under the provisions of the Income Tax Act, 1961 are pending against the Company for the Assessment Years **2014–15, 2015–16** and **2016–17** corresponding to Financial Years 2013–14, 2014–15 and 2015–16. It is further submitted that notice under Section 148 of the Income Tax Act, 1961 has been issued in respect of the

aforesaid assessment years and copies of such notices are annexed as

Annexure- D.

5. It is further submitted that approval under Section 151 of the Income Tax Act, 1961 has been obtained from the competent authority for initiation of reassessment proceedings under Section 147.
6. It is submitted that the present application has been filed by the Income Tax Department pursuant to CBDT Circular No. F.No. 225/423/2017/ITA-II dated 29.12.2017 and 18.04.2018, wherein directions have been issued to file applications for restoration of struck off companies in specified circumstances. A copy of the said Circular is annexed as **Annexure B.**
7. It is submitted that as per the aforesaid Circular, restoration is required in cases where proceedings under Sections 143(3)/144/147/153A/153C are pending or contemplated, or where departmental appeals, penalty proceedings, prosecution proceedings are pending, or where there is pendency of outstanding tax arrears.
8. It is submitted that in the present case, reassessment proceedings are pending against the Company and therefore the case falls within the conditions specified in the aforesaid Circular.
9. It is further submitted that the Income Tax Department has addressed a communication dated 17.01.2022 to the Registrar of Companies, Gwalior requesting revival of the Company. A copy of the said communication is annexed as **Annexure C.**



10. It is submitted that unless the name of the Company is restored, the Income Tax Department would not be in a position to effectively proceed with reassessment and recovery proceedings.

11. It is submitted that restoration of the Company is necessary to enable the Applicant to take the pending proceedings to their logical conclusion and to protect the legitimate interest of revenue.

12. No reply has been filed by Respondent No.1 – Registrar of Companies, despite having been granted several opportunities.

Respondent No.2 Reply:

13. The Respondent has denied the averments made in the Company Appeal and submitted that the Company Appeal is replete with factual and legal perversity and contains incorrect and misconceived submissions of fact and law. The Appellant has pleaded incongruent averments and has presented a distorted and incorrect picture of the facts and Appeal is not maintainable either in facts or in law, is bereft of particulars, devoid of merits and is an abuse of the process of law.

14. It is submitted that the Company Appeal is coercive in nature and has been filed with the intention of extracting money towards alleged tax liability, which was not determined on the date of filing of the Appeal. The Appeal is based on a show cause notice dated 20.03.2022 for Assessment Years 2014-2015, 2015-16 and 2016-17. The Respondent submits that the



Appellant cannot be categorised as a creditor and is not an aggrieved party, and therefore has no locus standi.

15.It is submitted that the Appellant is not qualified under Section 252(1) or Section 252(3) of the Companies Act, 2013, as it does not fall within the category of “the company or creditor or workman thereof”. Therefore, the Appellant is not an aggrieved person and the appeal is not maintainable.

16.It is submitted that the Appeal has been filed without disclosing any cause of action, and even the disclosed cause of action is illusory and without any substantive basis, being based on baseless assertions. Hence, the Appeal is liable to be dismissed at the threshold.

17.It is submitted that the Company had incurred losses and its entire paid-up capital stood eroded. The management, after due deliberation, decided that there was no intention to carry on business activities and applied for striking off under Section 248(2) of the Companies Act, 2013.

18.It is submitted that the Company filed Form STK-2 with the Registrar of Companies and complied with the provisions of Section 248 read with the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016. Copy of payment challan dated 11.03.2016 is annexed as **Annexure R/1**.

19.It is submitted that the Registrar of Companies, after due verification of Form STK-2 and documents, issued notice in Form STK-5/6 as per Rule 7,



placed the same on the MCA website and published it in the Official Gazette.

20. It is submitted that as per Rule 7(2), the Registrar simultaneously intimated regulatory authorities, including Income Tax authorities, inviting objections within 30 days, failing which it is presumed that there is no objection.
21. It is submitted that no objection was received from any authority including the Appellant within the stipulated period. Accordingly, the Registrar issued notice in Form STK-7 dated 05.05.2016 and struck off the name of the Company, which was published in the Official Gazette. Copies are annexed as Annexure R/2 (collectively).
22. It is submitted that the Appellant failed to file any objection despite issuance of notice by the Registrar. Due to such inaction and failure to act within the prescribed period, the Appellant's right to object stands extinguished.
23. It is submitted that the Company had informed the Income Tax Department regarding its struck off status and surrendered its PAN by letter dated 21.12.2017. Despite this, the Income Tax Department did not raise any objection for more than four years. Copy is annexed as Annexure R/3.
24. It is submitted that under Section 252(3) of the Companies Act, 2013, restoration can be ordered only if the Company was carrying on business or it is otherwise just to restore the name of the Company.
25. It is submitted that restoration of the Company would lead to consequences such as filing of financial statements and annual returns, appointment of



auditors, filing of income tax returns, and other compliances, involving substantial expenses, despite the Company having no assets or liabilities and having ceased business.

26. It is submitted that once the Company was struck off, it cannot be restored when the Income Tax Department had not raised any tax demand or passed any assessment order prior to the striking off. Reliance is placed on the judgment of NCLAT in **Pr. Commissioner of Income Tax, Delhi-6 vs Registrar of Companies, Delhi and Others (Company Appeal (AT) No. 405/2018 dated 20.09.2019)**.

27. It is submitted that the Income Tax Department, claiming to be a creditor, had not raised any demand or passed any assessment order prior to striking off. The subsequent notices and orders are later events and cannot form a ground for restoration.

28. It is submitted that the Appellant has not disclosed any details of assets or liabilities of the Company. The existence of taxable income or liability is not established.

29. It is submitted that the Respondent relies upon the judgment of the Hon'ble High Court of Madras in Commissioner of Income Tax, Chennai vs M/s Tarachanthini Services Pvt. Ltd. (TCA Nos. 839 & 840 of 2019 dated 20.07.2020) held that where the assessment relates to a period during which the company was in existence, the subsequent striking off of the company does not render the assessment proceedings invalid. The Court further held



that the Tribunal erred in not deciding the issue in light of statutory provisions and remanded the matter for decision on merits.

Analysis & observation:

30. We have heard the Learned Counsel for the parties and perused the material available on record.

31. Despite repeated opportunities, the Respondent no.1 – Registrar of Companies has not filed any reply. Accordingly, the matter has been considered on the basis of the material available on record.

32. The present Appeal has been filed under Section 252(3) of the Companies Act, 2013 seeking restoration of the name of the Respondent Company, which came to be struck off on 05.05.2016 under the provisions of Section 248 of the Act.

33. It is submitted by the Appellant that reassessment proceedings have been initiated against the Respondent Company in respect of the relevant Assessment Years pertaining to the period when the Company was in existence, and that determination and recovery of tax dues is required to be effected. The Appellant has sought restoration of the name of the Company to enable completion of such proceedings in accordance with law.

34. The principal objection of the Respondent is that no assessment proceedings or tax liability existed as on the date of striking off, and that the reassessment proceedings have been initiated only subsequently. It is further contended that the Appellant cannot be treated as a “creditor” within



the meaning of Section 252(3) of the Act, and that the present Appeal is not maintainable. The Respondent has also contended that restoration would impose substantial financial burden on the Company in terms of statutory compliances, and that the proceedings initiated by the Appellant are based on post-dissolution events and therefore cannot form the basis for restoration.

35. The issue for consideration before this Tribunal is whether, in the facts of the present case, the Appellant can be considered an aggrieved party having locus under Section 252(3) of the Act and whether restoration of the Company is warranted

36. It is relevant to note that, in terms of Section 252(3) of the Companies Act, 2013, an application for restoration may be made by the company or any member or creditor or workman thereof, if such person is aggrieved by the striking off of the name of the company. In this regard, a clarification issued by the Ministry of Corporate Affairs vide letter No. F.No.03/73/2017/CL-II dated 04.01.2018 clarifies that the Income Tax Department, being an aggrieved creditor, is entitled to approach the Tribunal for restoration of the name of a struck off company. It has further been stated that such applications filed by the Income Tax Department are not to be opposed.

37. It is also relevant to refer to section 252(3) of the companies act (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 sub-section(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, order the name of the company to 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 the name of the company had not been struck off from the register of companies.

38. While going through the petition and the material placed on record, it is observed that reassessment proceedings in respect of the Assessment Years 2014–15, 2015–16 and 2016–17 indicating that the Company had undertaken certain financial transactions during the said period which clearly shows that the Company was in operation at the relevant time.

39. We therefore find that the contention of the Respondent that the Appellant cannot be treated as a “creditor” is not acceptable. The expression “creditor” under Section 252(3) cannot be construed in a narrow sense so as to exclude statutory authorities. The Income Tax Department, being empowered to assess and recover tax dues arising from the period when the Company was in existence, has a legitimate and subsisting interest in the affairs of the



Company. Even though the tax liability may not have crystallized on the date of striking off, the pendency of reassessment proceedings indicates a potential statutory claim. Therefore, the Appellant cannot be said to lack locus to maintain the present Appeal.

40. The contention of the Respondent that the present proceedings are coercive in nature is not sustainable. Mere recourse to legal remedies available under law cannot be construed as coercive. The Appellant has invoked the jurisdiction of this Tribunal in accordance with law. It is open to the Respondent to avail appropriate remedies under the provisions of the Income Tax Act against any proposed assessment or demand, in accordance with law.

41. The contention of the Respondent that the present Appeal discloses no cause of action is also not sustainable. The pendency of assessment proceedings in respect of the relevant Assessment Years constitutes a valid cause of action under the provisions of the Income Tax Act. The Appellant, therefore, cannot be said to have approached this Tribunal without basis.

42. We further find that the reassessment proceedings have been initiated subsequent to the striking off of the Company. However, it is not in dispute that such proceedings pertain to Assessment Years during which the Company was in existence. Therefore, the mere fact that the proceedings have been initiated after the striking off does not disentitle the Appellant from seeking restoration, particularly when the subject matter relates to the



financial affairs of the Company during its operational period. The Appellant is not seeking restoration to initiate a wholly new or independent cause of action, but to pursue proceedings connected with the period when the Company was in existence.

43. The contention of the Respondent that no liability existed as on the date of striking off is noted. However, the determination of such liability falls within the jurisdiction of the Income Tax Authorities can be adjudicated in proceedings under Section 252 of the Act. The absence of a crystallized demand at the time of striking off cannot, by itself, defeat the statutory powers of the authorities to assess income pertaining to the relevant period.

44. The Respondent has also relied upon the fact that no objection was raised by the Income Tax Department at the time of striking off. While this factor is relevant, it is not determinative particularly when the proceedings relate to the period during which the company was in existence. It is also pertinent to note that income tax is a statutory liability and does not depend upon the issuance of any demand by the Income Tax Department, and the Company is under a statutory obligation to pay such taxes, if any, in accordance with law.

45. The contention regarding financial burden on account of statutory compliances is also not a ground to deny restoration. Such consequences are inherent in the Companies Act, 2013.



46. In the facts and circumstances of the present case, we find that reassessment proceedings are stated to be pending, and restoration is necessary to enable the Appellant to complete such proceedings in accordance with law. Denial of restoration would render such proceedings infructuous and may adversely affect the interest of revenue. At the same time, it is clarified that restoration does not amount to determination of any tax liability, and all contentions of the Respondent on merits are left open.

47. In view of the above and upon consideration of the submissions advanced and the material available on record, this Tribunal is satisfied that sufficient cause has been made out for restoration of the name of the Company in the Register of Companies maintained by the Respondent No. 1. Accordingly, the present Appeal is allowed. However, such restoration shall be confined to a limited purpose, as indicated hereinafter.

ORDER

48. By exercising the powers conferred on this Tribunal under Section 252 of the Companies Act, 2013, the Tribunal is hereby pleased to issue the following directions:

- a) The Registrar of Companies, Gwalior is directed to restore the name of the Respondent Company **M/s Adaptec Real Estate Private Limited** in the Register of Companies.



- b) The restoration of the Company shall be for the limited purpose of enabling the Appellant to complete the reassessment proceedings and take consequential steps in accordance with law.
- c) It is clarified that this restoration shall not be construed as revival of the Company for carrying on business, nor as an expression on the merits of the tax liability, and the rights and contentions of the Respondent on merits are left open.
- d) The Company is directed to file all its overdue statutory returns, financial statements and other necessary filings for the relevant financial years till date, in accordance with the provisions of the Companies Act, 2013 and Rules made thereunder.
- e) The Appellant is directed to deliver a certified copy of this Order to the Registrar of Companies, Gwalior within 30 days from the date of receipt of this Order.
- f) Upon such delivery and compliance with the above directions, the Registrar of Companies, Gwalior shall take necessary steps to restore the status of the Company from “Struck Off” to “Active” and make appropriate entries in its records, including publication in the Official Gazette, in accordance with law.
- g) This Order shall not come in the way of the Registrar of Companies initiating appropriate action(s) for any statutory non-compliances or



violations, if any, committed by the Company prior to or during the period of striking off, in accordance with law.

49. Accordingly, **Company Appeal No. 3/2022** stands **allowed** and **disposed** of in the above terms.

Sd/-

MAN MOHAN GUPTA
(MEMBER TECHNICAL)

Sd/-

BRAJENDRA MANI TRIPATHI
(MEMBER JUDICIAL)

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