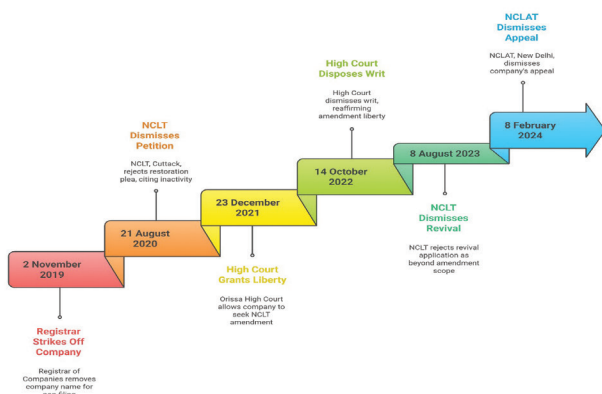


# BEST ANSWER - CASE STUDY - NOVEMBER, 2025

Decide the above issue considering the grounds on which a company's name can be struck off from the Register of Companies i.e. whether failure to file annual returns justifies striking off under Section 248 of the Companies Act, 2013.

## Litigation Journey before Appeal to the Supreme Court

Legal Timeline for Company Name Restoration



- 1) This Case Study is based on the applicability of certain provision of Section 248(1) of the Companies Act, 2013 ("Act"). Extracts of the Section 248(1) are as follows:

**248. Power of Registrar to remove name of company from register of companies:—**

(1) Where the Registrar has reasonable cause to believe that —

(a) a company has failed to commence its business within one year of its incorporation; or

(b) \*\*\*\*\* [Omitted]

(c) a company is not carrying on any business or operation for a period of two immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant company under section 455; or

(d) the subscribers to the memorandum have not paid the subscription which they had undertaken to pay at the time of incorporation of a company and a declaration to this effect has not been filed within one hundred and eighty days of its incorporation under sub-section (1) of section 10A; or

(e) the company is not carrying on any business or operations, as revealed after the physical verification carried out under sub-section (9) of section 12.

he shall send a notice to the company and all the directors of the company, of his intention to remove the name of the company from the register of companies and requesting them to send their representations along with copies of the relevant documents, if any, within a period of thirty days from the date of the notice.

- 2) It means section 248(1) empowers the Registrar of Companies to remove a company's name from the Register if it has reasonable cause to believe that—

- the company has failed to commence its business within one year of incorporation; or
- the company is not carrying on any business or operation for a period of two immediately preceding financial years and has not applied for the status of a dormant company under Section 455; or
- the subscribers to the MOA have not paid their subscription money and a declaration to this effect has not been filed within 180 days of incorporation as required under Section 10A(1) of the Act; or
- the company is not carrying on business or operations as revealed during physical verification under Section 12(9) of the Act.

- 3) Non-filing of annual returns and financial statements may indicate a lapse in statutory compliance, but such default by itself does not conclusively establish that the company is not carrying on any business. The legislative intent is that striking off should be invoked only where there is clear evidence of dormancy or abandonment of business operations and not as a punitive response to non-compliance.

- 4) The Supreme Court, in *M/s. AKL Enterprise Pvt. Ltd. v. Registrar of Companies, Odisha (Civil Appeal No. 6109 of 2024)*, held that mere non-filing of annual returns for certain years cannot be a sufficient ground for striking off a company's name. The Supreme Court observed that:

- There was no material evidence proving that the company had ceased to carry on business;
- The Registrar had not alleged that the company was a shell entity or engaged in unlawful activities; and
- Striking off should not be used as a punitive measure when the company is genuine and willing to regularize its defaults.

Consequently, the Supreme Court directed restoration of the company's name, subject to compliance with legal formalities and payment of compounding fees.

- 5) Applying the above principles, it is evident that the failure to file financial statements and annual returns with the Registrar, though a statutory default, does not by itself meet the requirement under Section 248(1) (c) to justify striking off. Unless the Registrar can establish that the company had indeed discontinued its operations or was non-functional for two continuous years, the extreme step of striking off would be unjustified. The appropriate course in such cases is to initiate adjudication proceedings for non-filing, rather than extinguishing the company's corporate existence.
- 6) Therefore, in view of the legal framework provided under the Companies Act, 2013 and the Supreme Court Order cited in point no. 4 above, it can be concluded that the **mere failure to file financial statements and annual returns with the Registrar does not, by itself, justify the striking off of a company under Section 248 of the Companies Act, 2013**. Such an action must be supported by concrete evidence indicating that the company is not carrying on any business or operations. Accordingly, restoration of the company's name would be justified, subject to the fulfilment of compliance requirements and the payment of prescribed penalties or compounding fees.